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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 210

UNITED STATES OF AMERICA, APPELLANT

vs.

THE ATLANTIC REFINING COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

FILED JULY 23, 1958

PROBABLE JURISDICTION NOTED OCTOBER 13, 1958

SUPREME COURT OF THE UNITED STATES

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DISTRICT OF COLUMBIA

CLERK'S NOTE

Pursuant to stipulation of counsel, this record is being printed in four
volumes.

Volume I designated "General" contains:

Original complaint.

Final judgment (Consent Decree).

Notice of appeal.

Order of this Court noting probable jurisdiction.

Volume II designated "Arapahoe Pipe Line Company, et al. or 7%
Proceedings."

Volume III designated "Service Pipe Line Company, et al. Proceedings."

Volume IV designated "Tidal Pipe Line Company, et al. Proceedings."

INDEX

	Original	Print
Record from the U.S.D.C. for the District of Columbia.....		1
Complaint.....	3	2
Final judgment (Consent Decree).....	12	9
Notice of appeal.....	25	20
Order noting probable jurisdiction.....	30	22
Record from the U.S.D.C. for the District of Columbia.....	31	23
Motion for order for carrying out final judgment.....	31	23
Exhibit C—Letter from Arapahoe Pipe Line Company to The Attorney General, dated April 15, 1955.....	37	29

Record from the U.S.D.C. etc.—Continued

Motion for order etc.—Continued

Original Print

Exhibit D—Letter from Arapahoe Pipe Line Company to Assistant Attorney General, dated April 11, 1957	38	30
Exhibit E—Letter from Arapahoe Pipe Line Company to The Attorney General, dated April 13, 1956	39	31
Arapahoe Pipe Line Company—Report to the Attorney General of the United States for the Calendar Year, 1956	40	32
Response of respondent Arapahoe Pipe Line Company in opposition to motion for order for carrying out final judgment	43	33
Exhibits:		
No. 1—Throughput Agreement between The Pure Oil Company, Sinclair Crude Oil Company and Arapahoe Pipe Line Company, dated July 15, 1954	73	52
No. 2—Mortgage and Deed of Trust between Arapahoe Pipe Line Company and The Chase National Bank of the City of New York, dated August 1, 1954	78	60
No. 3—Tentative valuation report and appendices on the Arapahoe Pipe Line Company as of December 31, 1955 with transmittal letter from I.C.C. Secretary, Harold D. McCoy, dated August 5, 1957	82	64
Interrogatories of plaintiff propounded to defendant, Arapahoe Pipe Line Company	106	86
Answers of defendant	108	87
Exhibit A-1—Arapahoe Pipe Line Company 2. Crude Oil Shipped over the Arapahoe Trunk System during years of existence, 1954 thru 1957	110	88
Exhibit A-2—Arapahoe Pipe Line Company 2. Crude Oil Gathered by Arapahoe Gathering System during years of existence, 1956 and 1957	111	89
Exhibit B—Arapahoe Pipe Line Company 3. Shipping Capacities of the Arapahoe Trunk System during years of existence 1954 thru 1957	112	89
Exhibit C—Arapahoe Pipe Line Company 4. Amount of tariff received for transportation by Trunk Line and Gathering Systems during years of existence 1954 thru 1957	113	90
Stipulation naming parties in interest, filed January 30, 1958	114	90
Petition of Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company for order to confirm rights under the judgment of December 23, 1941	116	92
Motion of Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company to dismiss government's motion and for further relief	121	95
Affidavit of Arthur H. Dean	126	97

INDEX

III

Record from the U.S.D.C. etc.—Continued.

Original Print

Statement pursuant to stipulation of January 30, 1958.....	134	103
Answer and statement of defendant, Magnolia Pipe Line Company.....	139	107
Statement of Plantation Pipe Line Company in opposition to plaintiff's motion directed against Arapahoe Pipe Line Company.....	146	111
Exhibits:		
No. 1 and attachment—Letter from C. R. Younts, President to The Attorney General, dated April 14, 1943 and Report of Plantation Pipe Line Company, dated April 14, 1943.....	151	114
No. 2—Letter from Tom C. Clark, Assistant Attorney General to S. V. Kane, dated April 22, 1943.....	152	115
No. 3—Letter from C. R. Younts, by S. V. Kane to Tom C. Clark, dated May 14, 1943.....	153	116
No. 4 and attachment—Letter from S. V. Kane to Tom C. Clark, Attorney General, dated April 12, 1949 and Report of Plantation Pipe Line Company, dated April 12, 1949.....	154	117
No. 5—Letter from Wendell Berge, Assistant Attorney General to S. V. Kane, dated June 23, 1944.....	156	119
No. 6—Letter from Plantation Pipe Line Company to Wendell Berge, Assistant Attorney General, dated July 17, 1944.....	157	119
No. 7—Letter from George Koegler to H. Graham Morrison, Assistant Attorney General, dated June 11, 1951.....	158	120
No. 8—Letter from Newell A. Clapp to George Koegler, Standard Oil Company (N.J.) dated July 5, 1951.....	160	122
No. 9—Letter from George Koegler to Newell A. Clapp dated July 9, 1951.....	161	123
No. 10—Letter from Newell A. Clapp to George Koegler dated July 13, 1951.....	162	124
Statement of the defendant, Great Lakes Pipe Line Company pursuant to stipulation of January 30, 1958.....	163	125
Attachments 1, 2, 3, and 4—Correspondence between the Attorney General's office and R. A. Kroenert, dated May 29, 1943; June 24, 1943; August 23, 1943 and August 30, 1943.....	168	129
Petition of defendant, Great Lakes Pipe Line Company for order declaring plan set forth in petition is not in violation of the judgment, etc.....	176	135
Affidavit of James J. Cosgrove.....	183	140
Order dispensing with service of copy of petition on certain defendants.....	185	142
Order that plan set forth in petition is not a violation of said judgment.....	187	143

Record from the U.S.D.C. etc.—Continued

Original Print

Statement of Shell Pipe Line Corporation in opposition to plaintiff's motion directed against Arapahoe Pipe Line Company.....	189	145
Factual Statement of Sinclair Pipe Line Company successor to defendant Sinclair Refining Company in opposition to motion of United States v. Arapahoe Pipe Line Company for order carrying out final judgment.....	192	147
Exhibits:		
No. 1—Letter from Consolidated Oil Corporation to Thurman W. Arnold dated November 16, 1942.....	208	155
No. 2—Letter from Thurman Arnold to Consolidated Oil Corporation, dated November 17, 1942.....	211	157
No. 3—Letter from Sinclair Pipe Line Company to The Attorney General, dated April 12, 1955.....	214	158
Exhibit A—Sinclair Pipe Line Company—I.C.C.'s final value as of December 31, 1947, etc.....	216	161
Exhibit A-1—Valuation Report for Pipe Line property of Sinclair Pipe Line Company as of December 31, 1953.....	218	162
Exhibit No. 4—Letter from Stanley N. Barnes, Assistant Attorney General, to William H. Morris, dated April 28, 1955.....	220	163
Exhibit No. 5—Letter from R. C. Bearden to Stanley N. Barnes, dated May 18, 1955.....	222	164
Statement of defendant, The Texas Pipe Line Company relating to motion of plaintiff with respect to Arapahoe Pipe Line Company, filed pursuant to stipulation and order of January 30, 1958.....	224	166
Statement of defendant, Texaco-Cities Service Pipe Line Company (formerly named The Texas-Empire Pipe Line Company) relating to motion of plaintiff with respect to Arapahoe Pipe Line Company filed pursuant to stipulation and order on January 30, 1958.....	228	168
Statement of defendant, Texas-New Mexico Pipe Line Company, relating to motion of plaintiff with respect to Arapahoe Pipe Line Company, filed pursuant to stipulation and order of January 30, 1958.....	232	170
Statement of defendant Humble Pipe Line Company pursuant to stipulation of January 30, 1958.....	236	172
Answer of plaintiff, United States, to petition of Interstate Pipe Line Co. and Tuscarora Pipe Line Co., Ltd. for order to confirm rights under the judgment of December 23, 1941.....	241	175

INDEX

V

Record from the U.S.D.C. etc.—Continued

Original Print

Order directing plaintiff to serve all defendants with his motion papers addressed to Arapahoe and consolidating petition of Interstate and Tuscarora for hearing with and motion on March 24, 1958	243	177
Transcript of hearing of March 24, 1958 (Excerpt from) Statement by the court	244	178
Three motions of government denied	245	179
Order denying plaintiff's motion for an order for carrying out final judgment against Arapahoe Pipe Line Company, etc.	250	180
Motion for order carrying out the final judgment entered on December 23, 1941	252	183
Exhibit C—Transmittal letter from Service Pipe Line Company to The Attorney General, dated December 1, 1953	258	188
Service Pipe Line Company—Amended Report to the Attorney General of the United States for the Calendar Year 1952	259	189
Exhibit D—Transmittal letter from Service Pipe Line Company to The Attorney General, dated April 6, 1956	260	190
Service Pipe Line Company—Report to the Attorney General of the United States for the Calendar Year 1955	261	191
Opposition of Service Pipe Line Company and Standard Oil Company (Indiana) to motion for order for carrying out final judgment	263	193
Transcript of hearing of March 25, 1958 (Excerpt from) Ruling of the Court	277	201
Order denying motion for an order to carry out the final judgment entered on December 31, 1941	278	202
Motion for order for carrying out the final judgment entered December 31, 1941	279	203
Exhibit C—Transmittal letter from Tidal Pipe Line Company to Attorney General, dated September 25, 1950	289	211
Revised reports made on behalf of Tidal Pipe Line Company for the calendar years 1942 through 1948 inclusive	290	212
Exhibit D—Transmittal letter from Tidal Pipe Line Company to Attorney General, dated September 10, 1953	305	226
Revised reports made on behalf of Tidal Pipe Line Company for the calendar years 1949 through 1952 inclusive	306	227
Exhibit E—Transmittal letter from Tidal Pipe Line Company to Attorney General dated September 27, 1954	315	234

Record from the U.S.D.C., etc.—Continued.

Motion for order, etc.—Continued

Exhibit E—Continued

	Original	Print
Revised report made on behalf of Tidal Pipe Line Company for the year 1953.....	316	235
Response of Tidal Pipe Line Company and Tidewater Oil Company to plaintiff's motion for order for carrying out the final judgment entered January 23, 1941.....	317	236
Exhibits:		
A to F—Tidal Pipe Line Company annual reports to the Attorney General for the calendar years 1948 through 1953 inclusive.....	330	245
G—Letter from Stanley M. Barnes, Assistant Attorney General to Mr. Y. P. Broome, Secretary, Tidal Pipe Line Company, dated March 10, 1953 (?) 54.....	342	255
H—Letter from Tidal Pipe Line Company by Y. P. Broome to Stanley M. Barnes, dated April 8, 1954.....	343	255
I—Letter from Stanley M. Barnes to Y. P. Broome, Tidal Pipe Line Company, dated September 19, 1955.....	345	257
J—Letter from Tidal Pipe Line Company to Stanley M. Barnes, dated October 20, 1955.....	346	257
K—Telegram from Victor R. Hanson, Asst. Attorney General to Lloyd Armstrong, Tidal Pipe Line Company.....	347	258
L—Telegram from Lloyd Armstrong, Tidal Pipe Line Company to Victor R. Hanson.....	348	259
Appendix.....	352	259
Tidal's original 1943 report to Attorney General.....	353	259
Letter from Wendell Berge to Y. P. Broome, Tidal Pipe Line Company, dated April 22, 1944.....	353	259
Letter from Tidal Pipe Line Company to Attorney General, dated April 6, 1944.....	354	260
Tidal Pipe Line Company—Valuation used as earnings basis, December 31, 1942.....	355	261
Tidal's original 1944 report to Attorney General.....	356	262
Acknowledging Letter from Wendell Berge to Y. P. Broome, Tidal Pipe Line Company, dated April 25, 1945.....	356	262
Letter from Tidal Pipe Line Company to Attorney General dated April 9, 1945.....	357	263
Tidal Pipe Line Company—Valuation used as earnings basis as of December 31, 1943.....	358	264
Tidal's revised 1943 report to Attorney General.....	359	265
Letter from Y. P. Broome, to Attorney General, dated September 25, 1950.....	359	266
Tidal Pipe Line Company—Estimated Valuation of Properties as of December 31, 1942 at 1947 period prices.....	360	267

INDEX

VM

Record from the U.S.D.C., etc.—Continued Appendix—Continued

Original Print

Tidal's revised 1944 report to Attorney General	361	267
Letter from Y. P. Broome to Attorney General, dated September 25, 1950	361	267
Tidal Pipe Line Company—Estimated Valuation of PROPERTIES as of December 31, 1943 at 1947 period prices	362	269
Tidal's revised 1945 report to Attorney General:		
Letter from Y. P. Broome to Attorney General, dated September 25, 1950	363	269
Tidal Pipe Line Company—Estimated valuation of properties as of December 31, 1944 at 1947 period prices	364	271
Tidal's revised 1946 report to Attorney General	365	271
Letter from Y. P. Broome to Attorney General, dated September 25, 1950	365	271
Tidal Pipe Line Company—Estimated Valuation of properties as of December 31, 1945 at 1947 period prices	366	273
Tidal's revised 1947 report to Attorney General:		
Letter from Y. P. Broome to Attorney General, dated September 25, 1950	367	273
Tidal Pipe Line Company—Estimated Valuation of Properties as of December 31, 1946 at 1947 period prices	368	275
Transcript of hearing of March 25, 1958 (Excerpt from)...	370	275
Ruling of the Court	370	275
Order denying motion for an order directing Tidal Pipe Line Company to carry out the judgment entered December 23, 1941, etc.	372	276

In the United States District Court for the
District of Columbia

[File endorsement omitted.]

Civil Action No. 14060

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING COMPANY; CITIES SERVICE COMPANY; CONSOLIDATED OIL CORPORATION; CONTINENTAL OIL COMPANY; GULF OIL CORPORATION; HUMBLE OIL & REFINING COMPANY; MID-CONTINENT PETROLEUM CORPORATION; PHILLIPS PETROLEUM COMPANY; PURE OIL COMPANY; SHELL UNION OIL CORPORATION; SKELLY OIL COMPANY; SOCONY-VACUUM OIL COMPANY, INCORPORATED; STANDARD OIL COMPANY (INDIANA); STANDARD OIL COMPANY (KENTUCKY); STANDARD OIL COMPANY (NEW JERSEY); THE STANDARD OIL COMPANY (OHIO); SUN OIL COMPANY; THE TEXAS COMPANY; THE TEXAS CORPORATION; TIDE WATER ASSOCIATED OIL COMPANY; AJAX PIPE LINE CORPORATION; ARKANSAS FUEL OIL COMPANY; ARKANSAS NATURAL GAS CORPORATION; ARKANSAS PIPELINE CORPORATION; ATLANTIC PIPE LINE COMPANY; BUFFALO PIPE LINE CORPORATION; CARPER OIL COMPANY; CITIES SERVICE OIL COMPANY (DEL.); CONTINENTAL PIPE LINE COMPANY; DETROIT SOUTHERN PIPE LINE COMPANY; EMPIRE GAS & FUEL COMPANY; EMPIRE PIPELINE COMPANY; GREAT LAKES PIPE LINE COMPANY; GULF REFINING COMPANY; HUMBLE PIPE LINE COMPANY; INTERNATIONAL PIPE LINE COMPANY; KAW PIPE LINE COMPANY; KEYSTONE PIPE LINE COMPANY; LAWRENCE PIPE LINE COMPANY; MAGNOLIA PETROLEUM COMPANY; MAGNOLIA PIPE LINE COMPANY; MAGNOLIA PIPE LINE COMPANY OF ILLINOIS; MIDDLESEX PIPE LINE COMPANY; OKLAHOMA PIPE LINE COMPANY; PAN AMERICAN PETROLEUM & TRANSPORT COMPANY; PAN AMERICAN PIPE LINE COMPANY; PHILLIPS PIPE LINE COMPANY; PLANTATION PIPE LINE COMPANY; PORTLAND PIPE LINE COMPANY; PURE OIL PIPE LINE COMPANY (PENNA); PURE TRANSPORTATION COMPANY; SHELL PIPE LINE CORPORATION; SINCLAIR REFINING COMPANY; SOHIO PIPE LINE COMPANY; SOUTHEASTERN PIPE

LINE COMPANY; STANDARD OIL COMPANY OF LOUISIANA; STANDARD OIL COMPANY OF NEW JERSEY; STANDISH PIPE LINE COMPANY; STANOLIND PIPE LINE COMPANY; THE SUN OIL LINE COMPANY; SUN OIL LINE COMPANY OF MICHIGAN; SUN PIPE LINE COMPANY; SUN PIPE LINE COMPANY OF ILLINOIS; SUN PIPE LINE, INC.; SUN TRANSPORTATION COMPANY; SUSQUEHANNA PIPE LINE COMPANY; THE TEXAS EMPIRE PIPE LINE COMPANY; THE TEXAS-EMPIRE PIPE LINE COMPANY OF TEXAS; TEXAS-NEW MEXICO PIPE LINE COMPANY; THE TEXAS PIPE LINE COMPANY; THE TIDE-WATER PIPE COMPANY, LIMITED; TIDAL PIPE LINE COMPANY; TOLEDO NORTHERN PIPE LINE COMPANY; TRANSIT AND STORAGE COMPANY; TUSCARORA OIL COMPANY, LIMITED; UNITED STATES PIPE LINE COMPANY; UTAH OIL REFINING COMPANY; WAHASH PIPE LINE COMPANY; AND WHITE EAGLE PIPE LINE COMPANY, INC., DEFENDANTS

Complaint

Filed December 23, 1941

The United States of America, by Edward M. Curran, its attorney for the District of Columbia, acting under the direction of the Attorney General, brings this complaint against the above-named defendants and alleges:

1. The following defendants, hereinafter referred to as the "defendant shipper-owners," or "defendant common carriers," depending upon the character of relationship of each to common carrier pipelines, are duly organized and existing under the laws of the respective States and have their principal places of business and are affiliated with other defendants as indicated in the following table:

Name of corporation	Abbreviated name	State of incorporation	Location of principal place of business
The Atlantic Refining Company	Atlantic	Pennsylvania	Philadelphia, Pa.
Cities Service Company	Cities Service	Delaware	New York, N. Y.
Consolidated Oil Corporation	Consolidated	New York	New York, N. Y.
Continental Oil Company	Continental	Delaware	Ponca City, Okla.
Gulf Oil Corporation	Gulf	Pennsylvania	Pittsburgh, Pa.
Humble Oil & Refining Company	Humble	Texas	Houston, Texas.

Name of corporation	Abbreviated name	State of incorporation	Location of principal place of business
Mid-Continent Petroleum Corporation	Mid-Continent	Delaware	Tulsa, Okla.
Phillips Petroleum Company	Phillips	Delaware	Bartlesville, Okla.
Pure Oil Company	Pure	Ohio	Chicago, Ill.
Shell Union Oil Corporation	Shell	Delaware	New York, N. Y.
Skelly Oil Company	Skelly	Delaware	Tulsa, Okla.
Socony-Vacuum Oil Company, Incorporated	Socony	New York	New York, N. Y.
Standard Oil Company (Indiana)	Stanolind	Indiana	Chicago, Ill.
Standard Oil Company (Kentucky)	Soky	Kentucky	Louisville, Ky.
Standard Oil Company (New Jersey)	Esso	New Jersey	New York, N. Y.
The Standard Oil Company (Ohio)	Sohio	Ohio	Cleveland, Ohio
Sun Oil Company	Sun	New Jersey	Philadelphia, Pa.
The Texas Company	Texas	Delaware	New York, N. Y.
The Texas Corporation	Texas	Delaware	New York, N. Y.
Tide Water Associated Oil Company	Tide Water	Delaware	New York, N. Y.
Ajax Pipe Line Corporation	Affiliation: Sohio Pure Esso	Delaware	Tulsa, Okla.
Arkansas Fuel Oil Company	Cities Service	West Virginia	Shreveport, La.
Arkansas Natural Gas Corporation	Cities Service	Delaware	Shreveport, La.
Arkansas Pipeline Corporation	Cities Service	Delaware	Shreveport, La.
Atlantic Pipe Line Company	Atlantic	Mexico	Philadelphia, Pa.
Buffalo Pipe Line Corporation	Atlantic	New York	Rig Flats, N. Y.
Carter Oil Company	Esso	West Virginia	Tulsa, Okla.
Cities Service Oil Company (Del.)	Cities Service	Delaware	Bartlesville, Okla.
Continental Pipe Line Company	Continental	Delaware	Ponca City, Okla.
Detroit Southern Pipe Line Company	Pure Gulf Sun	Michigan	Chicago, Ill.
Empire Gas & Fuel Company	Cities Service	Delaware	Jersey City, N. J.
Empire Pipeline Company	Cities Service	Delaware	Bartlesville, Okla.
Great Lakes Pipe Line Company	Texas Phillips Mid-Continent Consolidated Pure Skelly Continental Cities Service	Delaware	Kansas City, Mo.
Gulf Refining Company	Gulf	Delaware	Pittsburgh, Pa.
Humble Pipe Line Company	Humble	Texas	Houston, Texas
International Pipe Line Company	Texas	Montana	Stauburst, Montana
Kaw Pipe Line Company	Texas Cities Service Phillips	Delaware	Tulsa, Okla.
Keystone Pipe Line Company	Atlantic	Pennsylvania	Philadelphia, Pa.
Lawrence Pipe Line Company	Texas	Delaware	Houston, Texas
Magnolia Petroleum Company	Socony	Texas	Dallas, Texas
Magnolia Pipe Line Company	Socony	Texas	Dallas, Texas
Magnolia Pipe Line Company of Illinois	Socony	Illinois	Dallas, Texas
Middlesex Pipe Line Company	Sun	New Jersey	Trenton, N. J.
Oklahoma Pipe Line Company	Esso	Oklahoma	Tulsa, Okla.
Pan American Petroleum & Transport Company	Stanolind	Delaware	Wilmington, Del.

UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

Name of corporation	Abbreviated name	State of incorporation	Location of principal place of business
Pan American Pipe Line Company	Stanolind	Delaware	Houston, Texas.
Phillips Pipe Line Company	Phillips	Delaware	Bartlesville, Okla.
Plantation Pipe Line Company	Shell	Delaware	Atlanta, Ga.
Portland Pipe Line Company	Esso	Maine	Portland, Me.
Pure Oil Pipe Line Company (Penn.)	Pure	Pennsylvania	Chicago, Ill.
Pure Transportation Company	Pure	Ohio	Chicago, Ill.
Shell Pipe Line Corporation	Shell	Maryland	Houston, Texas.
Sinclair Refining Company	Consolidated	Maine	New York, N. Y.
Sohio Pipe Line Company	Sohio	Delaware	Cleveland, Ohio.
Southeastern Pipe Line Company	Gulf	Delaware	Atlanta, Ga.
Standard Oil Company of Louisiana	Esso	Louisiana	Baton Rouge, La.
Standard Oil Company of New Jersey	Esso	Delaware	New York, N. Y.
Standish Pipe Line Company	Phillips	Delaware	Bartlesville, Okla.
Stanolind Pipe Line Company	Stanolind	Maine	Tulsa, Okla.
The Sun Oil Line Company	Sun	Ohio	Toledo, Ohio.
Sun Oil Line Company of Michigan	Sun	Michigan	Detroit, Mich.
Sun Pipe Line Company	Sun	Texas	Beaumont, Texas.
Sun Pipe Line Company of Illinois	Sun	Illinois	Chicago, Ill.
Sun Pipe Line, Inc.	Sun	New York	Syracuse, N. Y.
Sun Transportation Company	Sun	West Virginia	Charleston, W. Va.
Susquehanna Pipe Line Company	Sun	Pennsylvania	Philadelphia, Pa.
The Texas-Empire Pipe Line Company	Texas Cities Service	Delaware	Tulsa, Okla.
The Texas-Empire Pipe Line Company of Texas	Texas Tide Water Cities Service	Delaware	Tulsa, Okla.
Texas-New Mexico Pipe Line Company	Texas Tide Water Cities Service Consolidated	Delaware	Houston, Texas.
The Texas Pipe Line Company	Texas	Texas	Houston, Texas.
The Tide-Water Pipe Company, Limited	Tide Water	Pennsylvania	Bradford, Pa.
Tulsa Pipe Line Company	Tide Water	Oklahoma	Tulsa, Okla.
Toledo Northern Pipe Line Company	Pure Gulf	Ohio	Chicago, Ill.
Transit and Storage Company	Esso	Delaware	Port Huron, Mich.
Tuscarora Oil Company, Limited	Esso	Pennsylvania	Harrisburg, Pa.
United States Pipe Line Company	Pure	Pennsylvania	Chicago, Ill.
Utah Oil Refining Company	Stanolind	Utah	Salt Lake City, Utah.
Wabash Pipe Line Company	Pure	Illinois	Chicago, Ill.
White Eagle Pipe Line Company, Inc.	Socony	Kansas	New York, N. Y.

2. "Defendant common carrier" as used herein means and includes each and every defendant which is engaged in the business of transporting in interstate commerce crude oil or gasoline or other petroleum products by pipeline whether as a separate corporate entity, a pipeline department of one or more defendants, or a corporation or

partnership in which a defendant, including its subsidiaries and affiliates, is entitled to participate in the net earnings of such common carrier.

3. "Defendant shipper-owner" as used herein means and includes each and every defendant, including its subsidiaries, departments and affiliates, which is entitled to participate in net earnings of any defendant common carrier, where such defendant or any of its subsidiaries, departments or affiliates ships crude oil or gasoline or other petroleum products over the pipelines of any defendant common carrier.

4. This action is brought under the authority of Section 3 of the Act of Congress known as the "Elkins Act," approved February 19, 1903, 32 Stat. 847, 848, U.S.C., Title 49 Sec. 43, to enjoin the defendant common carriers from granting refunds, rebates, and offsets against regular tariff charges for the interstate transportation of property by pipeline, and from adopting and utilizing any scheme or device which results in the failure to observe strictly tariff rates, in violation of the provisions of the Interstate Commerce Act, approved February 4, 1887, as amended, 24 Stat. 379, 380, 381, U.S.C. Title 49 Sec. 6 (7), and the "Elkins Act," as amended, 34 Stat. 587-9, U.S.C., Title 49 Sec. 41; and to enjoin the defendant shipper-owners from receiving refunds, rebates, and offsets against, and any reductions from, regular tariff charges for the interstate transportation of property by pipeline in violation of the provisions of the "Elkins Act," as amended, and to collect from defendant shipper-owners the forfeitures authorized by that Act. These Acts of Congress prohibit the granting by a common carrier, and the receipt by a shipper, directly or indirectly, by or through any means or device whatsoever, of any sum of money or any other valuable consideration as a refund, rebate or offset against regular charges paid or due for interstate transportation of property, as fixed by the tariffs filed with the Interstate Commerce Commission.

7. 5. For a long period of time, and particularly since January 1, 1935 up to the date of the filing of this complaint, defendant common carriers by pipeline engaged in the interstate transportation of property, including crude oil, gasoline and petroleum products, under tariffs and concurrences, in tariffs duly filed by them with the Interstate Commerce Commission, which tariffs prescribed regular charges for the interstate transportation of such property. During the above men-

tioned period of time the defendant shipper-owners, directly or indirectly, have individually or jointly owned the greater part of the capital stock of the defendant common carriers and have controlled, supervised and dominated the management and operations of the defendant common carriers. Throughout said period of time the defendant shipper-owners have been and now are the principal shippers directly, or through their wholly owned subsidiaries, over the pipeline systems owned and controlled by them. The defendant shipper-owners have been shippers at all times over either the pipeline systems of the defendant common carriers or the pipeline systems operated as pipeline departments of their integrated organizations. The wholly owned and controlled subsidiaries of the defendant shipper-owners which ship over the pipelines of the defendant common carriers are the *alter ego* of the controlling defendant shipper-owners and the acts of shipping over the defendant common carriers by such subsidiaries are in truth and in fact the acts of the defendant shipper-owners.

6. During the above described period of time, the defendant shipper-owners have delivered directly, and through their wholly owned subsidiaries, to the defendant common carriers, at various receiving points located throughout the United States east of the Rocky Mountains and to other common carrier pipelines which were parties to joint interstate tariffs with defendant common carriers, crude oil, gasoline and other petroleum products for interstate transportation; such property has been transported in interstate commerce by defendant common carriers from receiving points in many states of the United States to and through those states of the United States and other states of the United States, and in connection with other carriers, both common and private, to points in those states and other states. The defendant shipper-owners directly, and through their wholly owned subsidiaries, paid to the defendant common carriers for such interstate transportation of their property tariff charges based on the regular tariff rates filed with the Interstate Commerce Commission for the transportation of such property. The wholly owned and controlled subsidiaries are the *alter ego* of the defendant shipper-owners and the payments of charges to the defendant common carriers by such subsidiaries were in truth and in fact payments by the defendant shipper-owners. In those instances where the common carrier pipeline systems have been and

are operated as a department of a defendant shipper-owner or its subsidiary, the regular tariff charges were credited or paid to the common carrier pipeline department rather than to a common carrier as a separate corporate entity.

7. During the above described period of time the defendant common carriers paid or credited to the defendant shipper-owners, directly and indirectly, and they knowingly received and accepted sums of money and other valuable considerations which were refunds, rebates and offsets from the regular tariff charges paid for the transportation of such property, such tariff charges being fixed by the schedules of rates contained in the applicable tariffs filed with the Interstate Commerce Commission. These refunds, rebates and offsets were passed on or credited, directly or indirectly, by the defendant common carriers to their defendant shipper-owners under the guise of dividends and earnings, the ownership of stock, and the ownership and operation of the common carrier pipeline systems as a department by the defendant shipper-owners, being the means and devices which resulted in the defendant common carriers granting, paying, or crediting to, and the receiving by the defendant shipper-owners, of refunds, rebates and offsets.

8. The ownership and operation of the defendant common carriers by the defendant shipper-owners has resulted in the interstate transportation of the property of their defendant shipper-owners at net charges which were far less than the regular tariff rates filed with the Interstate Commerce Commission, thereby nullifying the statutory requirements that all published tariff rates shall be strictly observed, and that no common carrier shall refund or remit in any manner, or by any device, any portion of the charges collected under regular applicable tariffs.

9. In those instances where the defendant shipper-owners operate common carrier pipelines as pipeline departments of their integrated organizations, such direct operation of pipelines by defendant shipper-owners is a mere substitute for the devices hereinbefore described. As shippers they receive and retain the differences between the actual costs of operation and the tariff charges paid on the basis of the published tariff rates for such transportation.

Wherefore plaintiff demands:

(1) That this Court adjudge and decree that the dividends, credits, payments, earnings and other considerations of value

paid, granted or credited to the defendant shipper-owners by the defendant common carriers and those defendants operating pipeline departments, and received or absorbed and retained, directly or indirectly, by such defendant shipper-owners under the guise of dividends, earnings, credits or other benefits, in the manner hereinabove described, constituted refunds, rebates, offsets, concessions and discriminations against the regular tariff charges applicable to the interstate transportation by pipeline of crude oil, gasoline, and other petroleum products in violation of the Interstate Commerce Act and the Elkins Act;

10 (2) That defendant shipper-owners be required to account for the refunds, rebates and offsets received by them and to pay to plaintiff the authorized forfeiture of three times the total amount of money and value of other considerations found by this Court to have been illegally granted, received, absorbed by or credited to those defendants from their defendant common carriers, or from their departments operating common carrier pipelines, as refunds, rebates and offsets since January 1, 1935;

(3) That defendant common carriers and their officers, agents and servants be permanently enjoined from paying, granting or crediting, directly or indirectly, by or through any means or device whatsoever, any refunds, rebates and offsets against, and any reductions from, regular tariff charges applicable to the interstate transportation of crude oil, gasoline and other petroleum products made over the pipelines operated by them;

(4) That defendant shipper-owners and their officers, agents and servants be permanently enjoined from soliciting, accepting, absorbing or receiving, directly or indirectly, through or by any means or device whatsoever, any refunds, rebates and offsets against, and any reductions from, regular tariff charges paid by them for the interstate transportation of crude oil, gasoline and other petroleum products over any common carrier by pipeline;

(5) That this Court adjudge and decree that defendant shipper-owners in their dual capacity of common carrier and shipper are violating the Interstate Commerce Act and the Elkins Act by receiving refunds, rebates, offsets, concessions and discriminations, and by failing strictly to observe the published tariffs on interstate shipments of crude oil, gasoline and other

petroleum products made over common carrier pipelines owned or controlled by them;

11 (6) That plaintiff have such other and further relief as is just;

(7) That plaintiff recover its costs herein.

UNITED STATES OF AMERICA,
EDWARD M. CURRAN,

United States Attorney for the District of Columbia.

FRANCIS BIDDLE,
Attorney General.

THURMAN ARNOLD,
Assistant Attorney General.

12 In United States District Court for the District
of Columbia

Final judgment (consent decree)

December 23, 1941

The plaintiff, United States of America, having filed its complaint herein on December 23, 1941; all the defendants having appeared generally and severally filed their answers to such complaint denying the substantive allegations thereof; all parties hereto by their respective attorneys herein having severally consented to the entry of this final judgment herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue and in final settlement of all claims herein in issue;

Wherefore it is ordered, adjudged and decreed in compromise and in final settlement of all money claims herein in issue, including claims for penalties, damages and forfeitures, as follows:

I. That the Court has jurisdiction of this cause of action, of the subject matter hereof and of all the parties hereto.

II. For the purposes of this judgment when hereinafter used:

"Defendant common carrier" shall mean and include each and every common carrier engaged in the business of transporting crude oil or gasoline or other petroleum products in interstate commerce by pipeline which is or may be (a) a defendant, or (b) the successor of a defendant, or (c) the subsidiary of a defendant, or (d) a pipeline department of one

or more defendants, or (e) a corporation, some or all of whose stock is owned by a defendant, or the successor or subsidiary of a defendant, or (f) owned or operated in such a manner that a defendant, its successor or subsidiary shall be entitled to participate in its net earnings.

"Shipper-owner" shall mean and include each defendant and its affiliates where such defendant or any of its affiliates ships crude oil or gasoline or other petroleum products by pipeline of any defendant common carrier and either the defendant or any one of its affiliates is entitled to participate in the net earnings of the defendant common carrier.

"Affiliates" shall mean and include successors and subsidiaries of any defendant, the parent of any defendant, and the subsidiaries of any such parent, and such other persons groups or corporations so related as to in effect control or to be controlled by any defendant.

"Petroleum products" shall not mean or include natural gas.

III. No defendant common carrier shall credit, give, grant, or pay, directly or indirectly, through or by any means or device whatsoever, to any shipper-owner in any calendar year, commencing as of January 1, 1942, any earnings, dividends, sums of money or other valuable considerations derived from transportation or other common carrier services which in the aggregate is in excess of its share of seven percentum (7%) of the valuation of such common carrier's property, if such common carrier shall have transported during said calendar year any crude oil, or gasoline, or other petroleum products for said shipper-owner, but shall be permitted (insofar as the Interstate Commerce and Elkins Acts are concerned) to credit, give, grant or pay said percentum.

(a) Valuation as hereinabove used shall mean the latest final valuation of each common carrier's property owned and used for common carrier purposes as made by the Interstate Commerce Commission. To the latest final valuation of the commission shall be added the value of additions and betterments to the common carrier property made after the date of such latest final valuation, and from this sum shall be deducted appropriate amounts for physical depreciation on, and retirements of, common carrier property, computed by the carrier as of the close of the next preceding year, in accordance with the methods used by the Inter-

state Commerce Commission in bringing valuations down to date, the classifications of property to conform to the uniform system of accounts for pipelines prescribed by the Interstate Commerce Commission. Such valuation shall not include the value of the common carrier facilities acquired through the investment of excess earnings transferred to and withdrawn from the surplus account as provided in paragraph V hereof.

(b) In event the Interstate Commerce Commission has not determined the final valuation of the property owned and used for common carrier purposes by any common carrier, and until such time as the Interstate Commerce Commission has determined the final valuation of such common carrier's property, the valuation shall be determined by the common carrier and shall be based upon the records and accounts of the carrier kept in accordance with the accounting methods set forth in the Uniform System of Accounts for Pipe Lines prescribed by the Interstate Commerce Commission. To this determination of valuation by the common carrier shall be added the value of additions and betterments to the common carrier property

made after the date of such determination, and from this sum shall be deducted appropriate amounts for physical depreciation on, and retirements of, common carrier property, computed as of the close of the next preceding year, in accordance with the Uniform System of Accounts for Pipe Lines prescribed by the Interstate Commerce Commission. Such determination of valuation shall not include the value of the common carrier facilities acquired through the investment of excess earnings transferred to and withdrawn from the surplus account, as provided in paragraph V hereof.

(c) Any amounts permitted to be credited, granted, paid or given during any calendar year as hereinabove provided, if earned and withheld, may be credited, granted, paid or given at any time thereafter in addition to credits and payments permitted during such subsequent years, unless (i) such earned and withheld sums shall have been invested in common carrier facilities and (ii) included in valuation as above defined.

(d) Any amounts permitted to be credited, granted, paid or given during any calendar year as hereinbefore provided, if not earned, may be credited, granted, paid or given within any one or more of the next succeeding three years, in addition to credits and payments permitted during each such subsequent year.

IV. No shipper-owner shall solicit, accept or receive, directly or indirectly, through or by any means or device whatsoever, from any defendant common carrier any sums of money or other valuable considerations which said defendant common carrier is prohibited from granting, crediting, paying, or giving by the provisions of paragraph III hereof.

16 V. Commencing January 1, 1942 each defendant common carrier shall retain (except as hereinafter provided) net earnings derived from transportation or other common carrier services in excess of the amounts permitted to be credited, granted, paid or given by paragraph III hereof and transfer such excess earnings to the surplus account within 90 days after the end of each calendar year. The said excess earnings shall be transferred to the surplus account as a separate item therein and in such a form as to be readily identifiable. The excess earnings thus transferred to the surplus account may be used by the defendant common carrier for extending existing or constructing or acquiring new common carrier facilities, for maintaining normal and reasonable working capital requirements during the current calendar year, and for retiring of any debt outstanding at the time of the entry of this judgment and decree, provided, however, that such debt or refunded debt was originally incurred for the purpose of, and the proceeds thereof expended in, constructing or acquiring common carrier property. In case of the dissolution, sale, transfer or divestment of any defendant common carrier, any retained portion of the surplus account may be disbursed to stockholders of the corporation which owns and controls the defendant common carrier at that time.

VI. In the event a shipper-owner or defendant common carrier should knowingly violate the provisions of paragraphs III or IV hereof, then and in such event, upon proof of such violation on hearing after notice and in lieu of any and all other remedies or proceedings for the enforcement hereof, the United States may have judgment entered in this cause against the recipient of any sums, the payment of which is prohibited by this judgment, for three times the amount by which the sum received exceeds the amount permitted by this judgment to be granted, credited, given or paid to such recipient.

17 VII. This judgment shall not in any manner (1) limit or qualify in any way the right of any party to introduce in the case of United States of America v. American Pe-

troileum Institute, et al., now pending in the District Court for the District of Columbia, or in any other proceeding, civil or criminal, brought under the antitrust laws, competent evidence otherwise admissible relating to the construction, operation, maintenance, use or distribution of pipelines or other means of transportation owned, operated, or controlled by the defendants herein, or with respect to the investment in, valuation of, benefits derived from ownership of or interest in, or rate of return upon, said pipelines or other methods of transportation, or (2) limit, restrict, enlarge or control in any way the right of the United States in the case of United States of America v. American Petroleum Institute, et al., or in any other proceeding brought under the antitrust laws to obtain from the Court such relief, including sale, divorcement, or any other kind of rearrangement with respect to pipelines or any other means of transportation now or hereafter owned, operated or controlled by the defendants herein, as the Court deems proper.

VIII. Each defendant common carrier shall render a report to the Attorney General of the United States not later than the 15th day of April of each year, showing for the preceding calendar year: The valuation used as earnings basis; total earnings available for distribution to owners or stockholders; earnings, dividends, payments or benefits credited, paid, granted or given to all stockholders or owners; and amounts of money transferred to or withdrawn from the surplus retained pursuant to paragraph V hereof.

IX. This judgment shall not be construed to restrict, limit, or enlarge any right, privilege or exemption granted to any pipeline corporation or its stockholders (a) by the provisions of the Act of Congress approved July 28, 1941, entitled "An Act to Facilitate the Construction, Extension, or Completion of Interstate Petroleum Pipe Lines related to National Defense", or (b) by the terms of any proclamation of the President of the United States issued pursuant to said Act of July 30, 1941.

X. The jurisdiction of this case is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this judgment, for the modification hereof upon any ground, and for the enforcement of compliance herewith in the manner set forth above. No

14 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

future modification hereof shall impose any liability upon any defendant for any act or conduct performed prior to the date of such modification, in excess of the liability imposed by paragraph VI hereof.

This 23rd day of December, 1941

DAVID A. PINE,
Justice.

We hereby consent to the entry of the foregoing final judgment.

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25 In the United States District Court for the
District of Columbia

[File endorsement omitted.]

Civil Action No. 14060

UNITED STATES OF AMERICA, PLAINTIFF

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

Notice of Appeal to the Supreme Court of the United States

Filed May 24, 1958

I

Notice is hereby given that the United States of America, plaintiff in the above entitled cause, hereby appeals to the Supreme Court of the United States from the following final orders of the district court entered in this action:

1. Order of March 25, 1958, denying plaintiff's motion for an "Order for Carrying Out Final Judgment" against Arapahoe Pipeline Company.

2. Order of March 26, 1958, denying plaintiff's motion for an order directing Tidal Pipeline Company to carry out the judgment.

3. Order of March 26, 1958, denying plaintiff's motion for an order directing defendant Service Pipeline Company to carry out the final judgment.

This appeal is taken pursuant to Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 49 U.S.C. 45.

II

The Clerk will please prepare a transcript of the record in the above entitled cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the entire record in this case.

III

The Government's complaint in a suit under the Interstate Commerce Act and the Elkins Act charged that common carrier pipeline companies had departed from published tariffs and had given illegal rebates through the payment of dividends to their oil company owners, which also were their

principal shippers. A consent judgment entered in the case prohibits the carriers from paying any dividends to a shipper-owner "which in the aggregate [are] in excess of its share of 7 per centum (7%) of the valuation of such common carrier's property * * *". The judgment further provides that "Valuation as hereinabove used shall mean the latest valuation of such common carrier's property owned and used for common carrier purposes as made by the Interstate Commerce Commission"; and that such valuation is to be adjusted by adding thereto the value of "additions and betterments," and subtracting therefrom the value of "depreciation and retirements," computed by the carrier "as of the close of the next preceding year * * *".

The following questions with respect to the construction of the judgment are presented by this appeal:

1. Whether a shipper-owner's "share" of 7% of the common carrier's property valuation is limited to that proportion of 7% of such valuation which represents the ratio of the shipper-owner's investment in the carrier to the carrier's total invested capital, including long-term debt.
2. Whether a common carrier, in determining the valuation of its property "owned and used" for common carrier purposes, may include property which it uses but does not own.
3. Whether a carrier, in making adjustments "as of the close of the next preceding year" to reflect increases and decreases in its final valuation, may include increases and decreases which occurred after the close of such year.

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22 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

30 Supreme Court of the United States

No. 210, October Term, 1958

UNITED STATES OF AMERICA, APPELLANT,

v.

THE ATLANTIC REFINING COMPANY ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Order noting probable jurisdiction

October 13, 1958

The Statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Clark and Mr. Justice Harlan took no part in the consideration or decision of this application.

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VOLUME II

**"ARAPAHOE PIPE LINE COMPANY, ET AL. OR
7% PROCEEDINGS."**

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 210

UNITED STATES OF AMERICA, APPELLANT

VS.

THE ATLANTIC REFINING COMPANY, ET AL.

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

FILED JULY 23, 1958

PROBABLE JURISDICTION NOTED OCTOBER 13, 1958

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 210

UNITED STATES OF AMERICA, APPELLANT

vs.

THE ATLANTIC REFINING COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

CLERK'S NOTE

Pursuant to stipulation of counsel, this record ~~is being~~ printed in four volumes.

Volume I designated "General" contains:

Original complaint.

Final judgment (Consent Decree).

Notice of appeal.

Order of this Court noting probable jurisdiction.

Volume II designated "Arapahoe Pipe Line Company, et al. or 7% Proceedings."

Volume III designated "Service Pipe Line Company, et al. Proceedings."

Volume IV designated "Tidal Pipe Line Company, et al. Proceedings."

INDEX

	Original	Print
Record from the U.S.D.C. for the District of Columbia		1
Complaint	3	2
Final judgment (Consent Decree)	12	9
Notice of appeal	25	20
Order noting probable jurisdiction	30	22
Record from the U.S.D.C. for the District of Columbia	31	23
Motion for order for carrying out final judgment	31	23
Exhibit C—Letter from Arapahoe Pipe Line Company to The Attorney General, dated April 15, 1953	37	29

Record from the U.S.D.C. etc.—Continued

Motion for order etc.—Continued

	Original	Print
Exhibit D—Letter from Arapahoe Pipe Line Company to Assistant Attorney General, dated April 11, 1957	38	30
Exhibit E—Letter from Arapahoe Pipe Line Company to The Attorney General, dated April 13, 1956	39	31
Arapahoe Pipe Line Company—Report to the Attorney General of the United States for the Calendar Year, 1956	40	32
Response of respondent Arapahoe Pipe Line Company in opposition to motion for order for carrying out final judgment	43	33
Exhibits:		
No. 1—Throughput Agreement between The Pure Oil Company, Sinclair Crude Oil Company and Arapahoe Pipe Line Company, dated July 15, 1954	73	52
No. 2—Mortgage and Deed of Trust between Arapahoe Pipe Line Company and The Chase National Bank of the City of New York, dated August 1, 1954	78	60
No. 3—Tentative valuation report and appendices on the Arapahoe Pipe Line Company as of December 31, 1956 with transmittal letter from I.C.C. Secretary, Harold D. McCoy, dated August 5, 1957	82	64
Interrogatories of plaintiff propounded to defendant, Arapahoe Pipe Line Company	106	86
Answers of defendant	108	87
Exhibit A-1—Arapahoe Pipe Line Company 2. Crude Oil Shipped over the Arapahoe Trunk System during years of existence, 1954 thru 1957	110	88
Exhibit A-2—Arapahoe Pipe Line Company 2. Crude Oil Gathered by Arapahoe Gathering System during years of existence, 1956 and 1957	111	89
Exhibit B—Arapahoe Pipe Line Company 3. Shipping Capacities of the Arapahoe Trunk System during years of existence 1954 thru 1957	112	89
Exhibit C—Arapahoe Pipe Line Company 4. Amount of tariff received for transportation by Trunk Line and Gathering Systems during years of existence 1954 thru 1957	113	90
Stipulation naming parties in interest, filed January 30, 1958	114	90
Petition of Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company for order to confirm rights under the judgment of December 23, 1941	116	92
Motion of Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company to dismiss government's motion and for further relief	121	95
Affidavit of Arthur H. Dean	126	97

INDEX

III

Record from the U.S.D.C. etc.—Continued

	Original	Print
Statement pursuant to stipulation of January 30, 1958.....	134	103
Answer and statement of defendant, Magnolia Pipe Line Company.....	139	107
Statement of Plantation Pipe Line Company in opposition to plaintiff's motion directed against Arapahoe Pipe Line Company.....	146	111
Exhibits:		
No. 1 and attachment—Letter from C. R. Younts, President to The Attorney General, dated April 14, 1943 and Report of Plantation Pipe Line Company, dated April 14, 1943.....	151	114
No. 2—Letter from Tom C. Clark, Assistant Attorney General to S. V. Kane, dated April 22, 1943.....	152	115
No. 3—Letter from C. R. Younts, by S. V. Kane to Tom C. Clark, dated May 14, 1943.....	153	116
No. 4 and attachment—Letter from S. V. Kane to Tom C. Clark, Attorney General, dated April 12, 1949 and Report of Plantation Pipe Line Company, dated April 12, 1949.....	154	117
No. 5—Letter from Wendell Berge, Assistant Attorney General to S. V. Kane, dated June 23, 1944.....	156	119
No. 6—Letter from Plantation Pipe Line Company to Wendell Berge, Assistant Attorney General, dated July 17, 1944.....	157	119
No. 7—Letter from George Koegler to H. Graham Morrison, Assistant Attorney General, dated June 11, 1951.....	158	120
No. 8—Letter from Newell A. Clapp to George Koegler, Standard Oil Company (N.J.) dated July 5, 1951.....	160	122
No. 9—Letter from George Koegler to Newell A. Clapp dated July 9, 1951.....	161	123
No. 10—Letter from Newell A. Clapp to George Koegler dated July 13, 1951.....	162	124
Statement of the defendant, Great Lakes Pipe Line Company pursuant to stipulation of January 30, 1958.....	163	125
Attachments 1, 2, 3, and 4—Correspondence between the Attorney General's office and R. A. Kroenert, dated May 29, 1943; June 24, 1943; August 23, 1943 and August 30, 1943.....	168	129
Petition of defendant, Great Lakes Pipe Line Company for order declaring plan set forth in petition is not in violation of the judgment, etc.....	176	135
Affidavit of James J. Cosgrove.....	183	140
Order dispensing with service of copy of petition on certain defendants.....	185	142
Order that plan set forth in petition is not a violation of said judgment.....	187	143

Record from the U.S.D.C. etc.—Continued

Original Print

Statement of Shell Pipe Line Corporation in opposition to plaintiff's motion directed against Arapahoe Pipe Line Company.....	189	145
Factual Statement of Sinclair Pipe Line Company successor to defendant Sinclair Refining Company in opposition to motion of United States v. Arapahoe Pipe Line Company for order carrying out final judgment.....	192	147
Exhibits:		
No. 1—Letter from Consolidated Oil Corporation to Thurman W. Arnold dated November 16, 1942.....	208	155
No. 2—Letter from Thurman Arnold to Consolidated Oil Corporation, dated November 17, 1942.....	211	157
No. 3—Letter from Sinclair Pipe Line Company to The Attorney General, dated April 12, 1955.....	214	158
Exhibit A—Sinclair Pipe Line Company—I.C.C.'s final value as of December 31, 1947, etc.....	216	161
Exhibit A-1—Valuation Report for Pipe Line property of Sinclair Pipe Line Company as of December 31, 1953.....	218	162
Exhibit No. 4—Letter from Stanley N. Barnes, Assistant Attorney General, to William H. Morris, dated April 28, 1955.....	220	163
Exhibit No. 5—Letter from R. C. Bearden to Stanley N. Barnes, dated May 18, 1955.....	222	164
Statement of defendant, The Texas Pipe Line Company relating to motion of plaintiff with respect to Arapahoe Pipe Line Company, filed pursuant to stipulation and order of January 30, 1958.....	224	166
Statement of defendant, Texaco-Cities Service Pipe Line Company (formerly named The Texas-Empire Pipe Line Company) relating to motion of plaintiff with respect to Arapahoe Pipe Line Company filed pursuant to stipulation and order on January 30, 1958.....	228	168
Statement of defendant, Texas-New Mexico Pipe Line Company, relating to motion of plaintiff with respect to Arapahoe Pipe Line Company, filed pursuant to stipulation and order of January 30, 1958.....	232	170
Statement of defendant Humble Pipe Line Company pursuant to stipulation of January 30, 1958.....	236	172
Answer of plaintiff, United States, to petition of Interstate Pipe Line Co. and Tuzcarora Pipe Line Co., Ltd. for order to confirm rights under the judgment of December 23, 1941.....	241	175

INDEX

V

Record from the U.S.D.C. etc.—Continued

Original Print

Order directing plaintiff to serve all defendants with its motion papers addressed to Arapahoe and consolidating petition of Interstate and Tuscarora for hearing with and motion on March 24, 1958.....	243	177
Transcript of hearing of March 24, 1958 (Excerpt from) Statement by the court.....	244	178
Three motions of government denied.....	245	179 ⁰
Order denying plaintiff's motion for an order for carrying out final judgment against Arapahoe Pipe Line Company, etc.....	250	180
Motion for order carrying out the final judgment entered on December 23, 1941.....	252	183
Exhibit C—Transmittal letter from Service Pipe Line Company to The Attorney General, dated December 1, 1953.....	258	183
Service Pipe Line Company—Amended Report to the Attorney General of the United States for the Calendar Year 1952.....	259	189
Exhibit D—Transmittal letter from Service Pipe Line Company to The Attorney General, dated April 6, 1950.....	260	190
Service Pipe Line Company—Report to the Attorney General of the United States for the Calendar Year 1955.....	261	191
Opposition of Service Pipe Line Company and Standard Oil Company (Indiana) to motion for order for carrying out final judgment.....	263	193
Transcript of hearing of March 25, 1958 (Excerpt from).....	277	201
Ruling of the Court.....	277	201
Order denying motion for an order to carry out the final judgment entered on December 31, 1941.....	278	202
Motion for order for carrying out the final judgment entered December 31, 1941.....	279	203
Exhibit C—Transmittal letter from Tidal Pipe Line Company to Attorney General, dated September 25, 1950.....	289	211
Revised reports made on behalf of Tidal Pipe Line Company for the calendar years 1942 through 1948 inclusive.....	290	212
Exhibit D—Transmittal letter from Tidal Pipe Line Company to Attorney General, dated September 10, 1953.....	305	226
Revised reports made on behalf of Tidal Pipe Line Company for the calendar years 1949 through 1952 inclusive.....	306	227
Exhibit E—Transmittal letter from Tidal Pipe Line Company to Attorney General dated September 27, 1954.....	315	234

Record from the U.S.D.C., etc.—Continued

Motion for order, etc.—Continued

Exhibit E—Continued

Original · Print

Revised report made on behalf of Tidal Pipe Line Company for the year 1953.....	316	235
Response of Tidal Pipe Line Company and Tidewater Oil Company to plaintiff's motion for order for carrying out the final judgment entered January 23, 1941.....	317	236
Exhibits:		
A to F—Tidal Pipe Line Company annual reports to the Attorney General for the calendar years 1948 through 1953 inclusive.....	330	245
G—Letter from Stanley M. Barnes, Assistant Attorney General to Mr. Y. P. Broome, Secretary, Tidal Pipe Line Company, dated March 10, 1953 (?) 54.....	342	255a
H—Letter from Tidal Pipe Line Company by Y. P. Broome to Stanley M. Barnes, dated April 8, 1954.....	343	255
I—Letter from Stanley M. Barnes to Y. P. Broome, Tidal Pipe Line Company, dated September 19, 1955.....	345	257
J—Letter from Tidal Pipe Line Company to Stanley M. Barnes, dated October 20, 1955.....	346	257
K—Telegram from Victor R. Hanson, Asst. Attorney General to Lloyd Armstrong, Tidal Pipe Line Company.....	347	258
L—Telegram from Lloyd Armstrong, Tidal Pipe Line Company to Victor R. Hanson.....	348	259
Appendix.....	352	259
Tidal's original 1943 report to Attorney General.....	353	259
Letter from Wendell Berge to Y. P. Broome, Tidal Pipe Line Company, dated April 22, 1944.....	353	259
Letter from Tidal Pipe Line Company to Attorney General, dated April 6, 1944.....	354	260
Tidal Pipe Line Company—Valuation used as earnings basis, December 31, 1942.....	355	261
Tidal's original 1944 report to Attorney General.....	356	262
Acknowledging Letter from Wendell Berge to Y. P. Broome, Tidal Pipe Line Company, dated April 25, 1945.....	356	262
Letter from Tidal Pipe Line Company to Attorney General dated April 9, 1945.....	357	263
Tidal Pipe Line Company—Valuation used as earnings basis as of December 31, 1943.....	358	264
Tidal's revised 1943 report to Attorney General.....	359	266
Letter from Y. P. Broome, to Attorney General, dated September 25, 1950.....	359	266
Tidal Pipe Line Company—Estimated Valuation of Properties as of December 31, 1942 at 1947 period prices.....	360	267

INDEX

VII

Record from the U.S.D.C., etc.—Continued

Appendix—Continued

	Original	Print
Tidal's revised 1944 report to Attorney General.....	361	267
Letter from Y. P. Broome to Attorney General, dated September 25, 1950.....	361	267
Tidal Pipe Line Company—Estimated Valuation of Properties as of December 31, 1943 at 1947 period prices.....	362	269
Tidal's revised 1945 report to Attorney General:		
Letter from Y. P. Broome to Attorney General, dated September 25, 1950.....	363	269
Tidal Pipe Line Company—Estimated valuation of properties as of December 31, 1944 at 1947 period prices.....	364	271
Tidal's revised 1946 report to Attorney General.....	365	271
Letter from Y. P. Broome to Attorney General, dated September 25, 1950.....	365	271
Tidal Pipe Line Company—Estimated Valuation of properties as of December 31, 1945 at 1947 period prices.....	366	273
Tidal's revised 1947 report to Attorney General:		
Letter from Y. P. Broome to Attorney General, dated September 25, 1950.....	367	273
Tidal Pipe Line Company—Estimated Valuation of Properties as of December 31, 1946 at 1947 period prices.....	368	275
Transcript of hearing of March 25, 1958 (Excerpt from).....	370	275
Ruling of the Court.....	370	275
Order denying motion for an order directing Tidal Pipe Line Company to carry out the judgment entered December 23, 1941, etc.....	372	276

In the United States District Court for the
District of Columbia

[File Endorsement Omitted.]

Civil Action No. 14060

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

Motion for order for carrying out final judgment

Filed October 11, 1957

Comes now the United States of America, the plaintiff in the above-entitled action, by Alfred Karsted, one of its duly authorized attorneys, and respectfully represents to the Court:

(1) That on December 23, 1941, a civil complaint, a copy of which is attached hereto and marked "Exhibit A," was filed in the Court in the above-entitled action charging the defendants, some of whom were common carriers by pipeline and some of whom were shippers-owners of such carriers, with violation of Section 1(1) of the "Elkins Act," as amended, 34 Stat. 587-9, U.S.C., Title 49, Sec. 41.

(2) That said complaint (par. 7) charged, among other things, that for a long period of time and particularly since January 1, 1935, up to the date of the filing of the complaint the defendant common carriers paid or credited to the defendant shipper-owners, directly or indirectly, and they knowingly received and accepted sums of money and other valuable considerations which were refunds, rebates and offsets from the regular tariff charges paid for the transportation of crude oil, gasoline and other petroleum products, such tariff charges being fixed by the schedules of rates contained in the applicable tariffs filed with the Interstate Commerce Commission. The complaint further charged that these refunds, rebates and offsets were passed on or credited, directly or indirectly,

by the defendant common carriers to their defendant shipper-owners under the guise of dividends and earnings, the ownership of stock, and the ownership and operation of the common carrier pipeline systems as a department by the defendant shipper-owners, being the means and devices which resulted in the defendant common carriers granting, paying,

or crediting to, and the receiving by the defendant shipper-owners, or refunds, rebates and offsets.

(3) That on December 23, 1941, a Final Consent Judgment, a copy of which is attached hereto and marked Exhibit B, was entered by this Court in this case. Paragraphs II, III, V, VIII and X of said Judgment provided in part as follows:

"II. For the purposes of this judgment when hereinafter used:

'Defendant common carrier' shall mean and include each and every common carrier engaged in the business of transporting crude oil or gasoline or other petroleum products in interstate commerce by pipeline which is or may be (a) a defendant, or (b) the successor of a defendant, or (c) the subsidiary of a defendant, or (d) a pipeline department of one or more defendants, or (e) a corporation, some or all of whose stock is owned by a defendant, or the successor or subsidiary of a defendant, or (f) owned or operated in such a manner that a defendant, its successor or subsidiary shall be entitled to participate in its net earnings.

"III. No defendant common carrier shall credit, give, grant, or pay, directly or indirectly, through or by any means, or device whatsoever, to any shipper-owner in any calendar year, commencing as of January 1, 1942, any earnings, dividends, sums of money or other valuable considerations derived from transportation or other common carrier services which in the aggregate is in excess of its share of seven percentum (7%) of the valuation of such common carrier's property, if such common carrier shall have transported during said calendar year any crude oil, or gasoline, or other petroleum products for said shipper-owner, but shall be permitted (insofar as the Interstate Commerce and Elkins Acts are concerned) to credit, give, grant or pay said percentum.

"(a) Valuation as hereinabove used shall mean the latest final valuation of each common carrier's property owned and used for common carrier purposes as made by the Interstate Commerce Commission. To the latest final valuation of the commission shall be added the value of additions and betterments to the common carrier property made after the date of such latest final valuation, and from this sum shall be deducted appropriate amounts for physical depreciation on, and retirements of, common carrier property, computed by

the carrier as of the close of the next preceding year, in accordance with the methods used by the Interstate Commerce Commission in bringing valuations down to date; the classifications of property to conform to the uniform system of accounts for pipelines prescribed by the Interstate Commerce Commission. Such valuation shall not include the value of the common carrier facilities acquired through the investment of excess earnings transferred to and withdrawn from the surplus account as provided in paragraph V hereof.

"V. Commencing January 1, 1942 each defendant common carrier shall retain (except as hereinafter provided) net earnings derived from transportation or other common carrier services in excess of the amounts permitted to be credited, granted, paid or given by paragraph III hereof and transfer such excess earnings to the surplus account within 90 days after the end of each calendar year. The said excess earnings shall be transferred to the surplus account as a separate item therein and in such a form as to be readily identifiable. The excess earnings thus transferred to the surplus account may be used by the defendant common carrier for extending existing or constructing or acquiring new common carrier facilities, for maintaining normal and reasonable working capital requirements during the current calendar year, and for retiring of any debt outstanding at the time of the entry of this judgment and decree, provided, however, that such debt or refunded debt was originally incurred for the purpose of, and the proceeds thereof expended in, constructing or acquiring common carrier property. In case of the dissolution, sale, transfer or divorcement of any defendant common carrier, any retained portion of the surplus account may be disbursed to stockholders of the corporation which owns and controls the defendant common carrier at that time.

"VIII. Each defendant common carrier shall render a report to the Attorney General of the United States not later than the 15th day of April of each year, showing for the preceding calendar year: the valuation used as earnings basis; total earnings available for distribution to owners or stockholders; earnings, dividends, payments or benefits credited, paid, granted or given to all stockholders or owners; and amounts of money trans-

ferred to or withdrawn from the surplus retained pursuant to paragraph V hereof.

"X. The jurisdiction of this case is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this judgment. * * *"

34 (4) That The Pure Oil Company is and has been since the entry of the judgment a party defendant to said judgment. That the Sinclair Pipe Line Company, which was incorporated November 9, 1950 as a wholly-owned subsidiary of the Sinclair Oil Corporation and which became the owner and operator of the entire pipeline system of Sinclair Refining Company, which is also a wholly-owned subsidiary of the Sinclair Oil Corporation, is a party defendant by virtue of the provisions of paragraph II of the judgment. That the Arapahoe Pipe Line Company (hereafter sometimes referred to as "the company"), a corporation of the State of Delaware with its principal office in Brush, Colorado, is jointly controlled by the Sinclair Pipe Line Company and The Pure Oil Company through equal ownership of the outstanding capital stock and is thus, by the provisions of paragraph II of the judgment, a defendant common carrier under the judgment.

(5) That the Arapahoe Pipe Line Company was incorporated on June 17, 1954, and that the par value of its outstanding capital stock is \$2,900,000 which represents the investment made in the company by the Sinclair Pipe Line Company and The Pure Oil Company.

(6) That less than two months after it was incorporated, the company issued \$16,000,000 of 25-year 3.80% First Mortgage Pipe Line Bonds to the Mutual Life Insurance Company, and on November 4, 1954, an additional \$10,000,000 of such bonds were issued to the same company.

(7) That on April 15, 1955 the company, pursuant to the provisions of paragraph VIII of the judgment, filed an annual report with the Attorney General covering the year 1954. Exhibit C attached hereto, in which it reported its valuation used as earnings basis to be \$1,624,060 and its total earnings available for distribution to stockholders to be \$54,704, i.e., \$58,980 less than 1/2 of the reported valuation.



(8) That the following year in its Form P report filed with the Interstate Commerce Commission for the period ending December 31, 1955, the company reported a total of \$21,925,281 invested in carrier property, and in its annual report to the Attorney General for the calendar year 1955 (filed April 13, 1956), Exhibit D attached hereto, the company reported its valuation used as earnings basis to be \$21,807,066. In Exhibit

35 D the company reported its net earnings for 1955 available for distribution to stockholders to be \$1,564,285 and it reported the 7% permissible dividend to its stockholders as \$1,526,495, i.e., \$37,790 less than its reported net earnings. This amount of \$37,790, it reported in Exhibit D, represented a portion of the amount permitted to be credited, granted, paid or given but which was not earned during the preceding year (and which the company was, therefore, by the provisions of paragraph III(d), permitted to grant, pay or give within any one or more of the next succeeding three years, in addition to credits and payments permitted during each such subsequent year).

(9) The following year in its Form P report for the year ending December 31, 1956, filed with the Interstate Commerce Commission, the company reported a total of \$23,480,506 invested in carrier property. In its annual report to the Attorney General for the calendar year 1956 (filed April 11, 1957), Exhibit E attached hereto, the company reported a valuation base of \$30,136,700 on which it reported its shipper-owners' permissible dividend to be \$2,109,569 or 7% of the reported valuation. The company reported its earnings derived from transportation and other common carrier services to be \$2,302,565 or \$192,996 in excess of the reported 7% permissible dividend. It reported applying \$21,190 of this excess to the 1954 deficit and transferring the balance of \$171,806 to the restricted surplus account.

In a recapitulation of its three reports, attached to Exhibit E, the company reported that of the total 7% dividends payable in 1954, 1955 and 1956, which amounted to a total of \$3,749,748, the company had actually paid only a dividend of \$580,000 in 1956, leaving a balance "payable in any subsequent year" of \$3,169,748.

(10) That the defendant Arapahoe Pipe Line Company in violation of the judgment has failed to deduct from the valuation of its common carrier property, before computing its

36 shipper-owners' permissible dividend, the share of the valuation of the company's carrier property financed by or attributable to the aforesaid loans of \$26,000,000 from third parties. As a result of its failure to deduct the share of its valuation attributable to loans from third parties, the defendant Arapahoe Pipe Line Company has computed dividends for its shipper-owners in excess of its shipper-owners' share of 7% of the valuation of Arapahoe's property in violation of the judgment. The allowable dividends payable to its shipper-owners reported by the defendant Arapahoe Pipe Line Company for the years 1954, 1955 and 1956 represent for each year, respectively, the following rates of return to its shipper-owners on their investment of \$2,900,000: 3.9% in 1954, 52.6% in 1955, and 72.7% in 1956.

Wherefore, movant, pursuant to paragraph X of the said judgment, prays for an order of this Court carrying out said judgment: (1) By directing the Arapahoe Pipe Line Company, before computing the permissible dividends for its shipper-owners, to deduct from the valuation of its property owned and used for common carrier purposes the share of such valuation that is the result of or attributable to monies obtained by the carrier from third parties for extending existing or constructing or acquiring new common carrier facilities, and (2) for such other and further orders as may seem appropriate and necessary to the Court.

Alfred Karsted,

ALFRED KARSTED,

Attorney, Department of Justice.

37

Exhibit C to motion

ARAPAHOE PIPE LINE COMPANY

P.O. BOX 460

INDEPENDENCE, KANSAS, April 15, 1955.

Re: Final Judgment (Consent Decree). United States vs. The Atlantic Refining Company, et al. Annual Report for 1954.

THE ATTORNEY GENERAL,
Department of Justice,
Washington, D.C.

DEAR SIR: Arapahoe Pipe Line Company is an interstate carrier which was organized on June 17, 1954, under the laws of the State of Delaware, and which commenced operations on or about the 16th day of November 1954. Fifty percent of its issued and outstanding capital stock is owned by The Pure Oil Company and fifty percent is owned by Sinclair Pipe Line Company.

In the event the Company is subject to the requirements of Paragraph VIII of the Final Judgment in Civil Action No. 14060, United States of America, Plaintiff, vs. The Atlantic Refining Company, et al., Defendants, which Final Judgment was entered December 23, 1941, the following information is submitted with respect to Arapahoe Pipe Line Company for the period ended December 31, 1954.

- (a) The valuation used as earnings basis was _____ \$1,624,000
- (b) The total earnings available for distribution to owners or stockholders was \$54,704, the net earnings of the corporation for the period ended December 31, 1954. The amount of \$54,704 is \$58,980 less than 7% of the valuation.
- (c) The earnings, dividends, payments or benefits credited, paid, granted or given to all stockholders or owners was _____ None
- (d) The amounts of money transferred to or withdrawn from the surplus retained pursuant to Paragraph V of the Final Judgment was _____ None

Respectfully submitted.

ARAPAHOE PIPE LINE COMPANY,
By C. E. Dickey,
C. E. DICKEY, Vice President.

ARAPAHOE PIPE LINE COMPANY

PRINCIPAL OFFICE

P.O. BOX 488

BRUSH, COLORADO, April 11, 1957.

Re: Final Judgment (Consent Decree). United States vs.
The Atlantic Refining Company, et al. Report for the
Year 1956.

MR. STANLEY N. BARNES,
Assistant Attorney General,
Anti-Trust Division,
Department of Justice,
Washington 25, D.C.

DEAR MR. BARNES: *Arapahoe Pipe Line Company* is an interstate carrier which was organized on June 17, 1954, under the laws of the State of Delaware, and which commenced operations on or about the 16th day of November 1954. Fifty percent of its issued and outstanding capital stock is owned by The Pure Oil Company and fifty percent is owned by Sinclair Pipe Line Company.

In the event the Company is subject to the requirements of Paragraph VIII of the Final Judgment in Civil Action No. 14060, United States of America, Plaintiff, vs. The Atlantic Refining Company, et al., Defendants, which Final Judgment was entered December 23, 1941, the following information is submitted with respect to Arapahoe Pipe Line Company for the period ended December 31, 1956:

Respectfully submitted.

ARAPAHOE PIPE LINE COMPANY,
By J. W. Meehan,
J. W. MEEHAN, *President.*

WFK:dc
Att.

Exhibit E to motion

ARAPAHOE PIPE LINE COMPANY

P.O. BOX 460

INDEPENDENCE, KANSAS, April 18, 1956.

Re: Final Judgment (Consent Decree). United States vs.
The Atlantic Refining Company, et al. Annual Report
for 1955.

The Attorney General,
Department of Justice,
Washington, D.C.

DEAR SIR: Arapahoe Pipe Line Company is an interstate carrier which was organized on June 17, 1954, under the laws of the State of Delaware, and which commenced operations on or about the 16th day of November 1954. Fifty percent of its issued and outstanding capital stock is owned by The Pure Oil Company and fifty percent is owned by Sinclair Pipe Line Company.

In the event the Company is subject to the requirements of Paragraph VIII of the Final Judgment in Civil Action No. 14060, United States of America, Plaintiff, vs. The Atlantic Refining Company, et al., Defendants, which Final Judgment was entered December 23, 1941, the following information is submitted with respect to Arapahoe Pipe Line Company for the period ended December 31, 1955.

- | | |
|--|--------------|
| (a) The valuation used as earnings basis was..... | \$21,807,066 |
| (b) The total earnings of Arapahoe Pipe Line Company available for distribution to owners or stockholders was \$1,564,285, the net earnings of the corporation for the period ended December 31, 1955. The amount distributable is \$1,564,285, which is comprised of \$1,528,495 being 7% of the valuation plus \$37,790 representing a portion of the amount permitted to be credited, granted, paid or given but not earned during a preceding year, not more than three years prior to the current year. | |
| (c) The earnings, dividends, payments or benefits credited, paid, granted or given to all stockholders or owners was..... | None |
| (d) The amounts of money transferred to or withdrawn from the surplus retained pursuant to Paragraph V of the Final Judgment was..... | None |

Respectfully submitted.

ARAPAHOE PIPE LINE COMPANY.

By C. E. Dickey,

C. E. DICKEY, Vice President.

40 *Attachment to Exhibit E*ARAPAHOE PIPE LINE COMPANY REPORT TO THE ATTORNEY GENERAL OF THE
UNITED STATES FOR THE CALENDAR YEAR 1956

(Civil Action #14060)

Valuation of property owned and used for common carrier purposes as of December 31, 1955 together with $\frac{1}{12}$ of the valuation of property purchased from Pure Transportation Company, Goodall Pipe Line Company, Pawnee Pipe Line Company and Sinclair Pipe Line Company and $\frac{5}{12}$ of the valuation of a $\frac{1}{6}$ undivided interest in the Sterling Pipe Line System formerly owned by Pure Transportation Company and Sinclair Pipe Line Company		\$39, 136, 700
7% of adjusted valuation of carrier property		2, 109, 569
Earnings derived from Transportation and other common carrier services—(Line 39, Schedule No. 302, Form P report to the Interstate Commerce Commission)		2, 302, 565
Net Earnings in Excess of 7% above		192, 896
Less: Amount applied to Year 1954		21, 190
Excess Earnings Transferred to Restricted Surplus Account		171, 806
Debits to Restricted Surplus Account during year:		
(a) Extending existing or constructing or acquiring new common carrier facilities	None	
(b) Maintaining Normal and reasonable working capital during the current calendar year	None	
(c) Retiring debt outstanding at December 31, 1941 which was incurred for the purpose of constructing or acquiring new common carrier facilities	None	None
Excess earnings retained and transferred to Restricted Surplus Account in March 1957		171, 806
41 Totals to Date		
7% of Valuation of Common Carrier Property:		
Year 1954		\$113, 684
Year 1955		1, 526, 495
Year 1956		2, 109, 569
Total to Date		3, 749, 748

Net Earnings:

Year 1954	\$54,704
Year 1955	1,504,285
Year 1956	2,302,565
Total to Date	3,921,554

Net Earnings in Excess of 7% of Valuation:

Year 1955	37,790
Year 1956	192,996
Total	230,786

Less: Excess Earnings used to offset part of the amount The Earnings were under 7% of the Valuation in the Make Up Period:

Year of Excess Earnings	Applied To Year		
1955	1954	\$37,790	
1956	1954	21,190	58,980

Total Transferred to Restricted Surplus in March 1957

171,806

Dividends Paid to Shipper—Owners:

Year 1954	None
Year 1955	None
Year 1956	580,000

Total to Date

580,000

Total permitted payments to Shipper Owners (7% of Valuation)

3,749,748

Less Dividends Paid to Shipper Owners

580,000

Balance Payable in any Subsequent Year

3,169,748

43 In the United States District Court for the District of Columbia

[File endorsement omitted.]

[Title omitted.]

Response of respondent Arapahoe Pipe Line Company in opposition to motion for order for carrying out final judgment

Filed January 20, 1958

Respondent Arapahoe Pipe Line Company (Arapahoe), in response and answer to the "Motion for Order Carrying Out Final Judgment" filed herein against it on October 11, 1957, respectfully represents:

FIRST DEFENSE

Arapahoe denies all and singular the allegations of said Motion, except those which are hereinafter expressly admitted:

1. Arapahoe admits the allegations of paragraph (1) of said Motion, but avers that it had no corporate existence when the suit was filed and was not a party thereto.

2. Arapahoe avers that paragraph (2) of the Motion requires no answer, inasmuch as "Exhibit A" attached to the Motion is a correct copy of the entire complaint purported to be partially described in said paragraph (2).

44 3. Answering paragraph (3) of the Motion, Arapahoe:

(a) Admits that on December 23, 1941, a final judgment was entered in said case by consent of the parties thereto; and avers that this respondent then had no corporate existence and was not a party to said case;

(b) Admits that "Exhibit B" attached to the Motion is a true copy of the consent judgment entered by the Court in said case.

4. Answering paragraph (4) of the Motion, Arapahoe:

(a) Admits that The Pure Oil Company (Pure) is, and has been since the entry of the judgment, a party defendant to said judgment;

(b) Admits that Sinclair Pipe Line Company was incorporated on November 9, 1950 as a wholly-owned subsidiary of Sinclair Oil Corporation; that it became the owner and operator of the common carrier pipeline facilities previously owned and operated by Sinclair Refining Company; that Sinclair Refining Company is a wholly-owned subsidiary of Sinclair Oil Corporation; and avers that Sinclair Oil Corporation, under its then corporate name and style of Consolidated Oil Corporation, and Sinclair Refining Company were parties defendant to said judgment. (For purposes of this Response one or more of the Sinclair Companies referred to above may hereinafter be referred to as "Sinclair");

45 (c) Admits that Arapahoe is a Delaware corporation with its principal office at Brush, Colorado; and that Sinclair and Pure each own fifty percent (50%) of its outstanding capital stock.

5. Answering paragraph (5) of the Motion, Arapahoe:

(a) Admits that it was incorporated on June 17, 1954 and that the par value of its outstanding stock is \$2,900,000;

(b) Avers that any determination of the investment in Arapahoe of Pure and Sinclair must give full weight to the Throughput Agreement and other facts hereinafter averred.

6. Answering paragraph (6) of the Motion, Arapahoe:

(a) Denies that it has issued or sold bonds to Mutual Life Insurance Company;

(b) Avers that the \$16,000,000 of 25 year 3.80% First Mortgage Pipe Line Bonds were issued and sold to Metropolitan Life Insurance Company (Metropolitan); that the additional \$10,000,000 of such bonds were issued and sold to the same company;

(c) Avers that prior to the construction of Arapahoe's pipeline system and the issuance and sale of said bonds to Metropolitan, Arapahoe, Pure and Sinclair Crude Oil Company, a corporation organized under the laws of Delaware (a wholly-owned subsidiary of Sinclair Oil Corporation and hereinafter, for purposes of this Response, also referred to as "Sinclair") entered into a written contract designated a "Throughput Agreement", a copy of which is hereto attached as Exhibit 1, and by reference incorporated herein;

(d) Avers that as of August 1, 1954 Arapahoe executed and delivered a Mortgage and Deed of Trust to The Chase National Bank of the City of New York, as Trustee, to secure Arapahoe's obligations upon the bonds which Metropolitan had agreed to purchase. Said Mortgage and Deed of Trust mortgaged Arapahoe's entire pipeline system and pledged all of Arapahoe's rights under the terms of the Throughput Agreement.

(e) Avers that the said Mortgage and Deed of Trust contained sinking fund provisions pursuant to which Arapahoe became obligated, after a brief development period, to pay (in accordance with a formula contained in the said Mortgage and Deed of Trust) \$566,000 semi-annually in redemption of outstanding bonds until the entire principal of the said bonds shall have been paid in full. Said payments are referred to in said Mortgage and Deed of Trust as "mandatory sinking fund payments". Arapahoe is granted an option to pay semi-annually an additional amount in redemption of bonds which is not in excess of the mandatory payments.

(f) Avers that a true and correct copy of the pertinent provisions of said Mortgage and Deed of Trust is hereto attached as Exhibit 2, and by reference incorporated herein.

(g) Avers that the said loan was made in reliance upon the commitments made by Pure and Sinclair in the Throughput Agreement and would not have been made without such Agreement and a pledge of Arapahoe's rights thereunder.

47 7. Answering paragraph (7) of the Motion, Arapahoe:

(a) Admits the filing on April 15, 1955 of the report to the Attorney General covering the year 1954, a copy of which is attached to the Motion as "Exhibit C";

(b) Avers that by filing the said report to the Attorney General, Arapahoe, did not concede that it is subject to the provisions of the final judgment; that, as the said report shows on its face, it was filed only in the event Arapahoe is subject to the final judgment;

(c) Avers that the valuation used as earnings basis of \$1,624,060 reported by Arapahoe was determined by its pursuant to the following clear and unambiguous provisions of Paragraph III(b) of the said judgment:

"(b) In event the Interstate Commerce Commission has not determined the final valuation of the property owned and used for common carrier purposes by any common carrier, and until such time as the Interstate Commerce Commission has determined the final valuation of such common carrier's property, the valuation shall be determined by the common carrier and shall be based upon the records and accounts of the carrier kept in accordance with the accounting methods set forth in the Uniform System of Accounts for Pipe Lines prescribed by the Interstate Commerce Commission. * * *

(d) Avers that the Arapahoe pipeline system had been completed by late November, 1954 to a point which enabled Arapahoe to commence its common carrier service and operate during the month of December, 1954. Since the Interstate Commerce Commission had not determined the valuation of its property owned and used for common carrier purposes,

48 Arapahoe (in accordance with Paragraph III(b) of the judgment) itself determined such valuation as of December 31, 1954 to have been \$19,488,716.72. This determination was based upon the records and accounts of the carrier kept in accordance with the accounting methods set forth in the Uniform System of Accounts for Pipe Lines prescribed by the Interstate Commerce Commission. In determining said valuation, Arapahoe used its actual expendi-

tures for carrier property, less one month's depreciation. Said valuation was lower than that which Arapahoe might properly have reported because it did not include the value of certain property which was owned and used for common carrier purposes on December 31, 1954 but had not on said date been transferred from the "Construction Work in Progress" account. Since the facilities had been in public service for only one month of the year 1954, one-twelfth of the valuation, or \$1,624,060, was reported to the Attorney General (see "Exhibit C" to the Motion) as the valuation used as earnings basis. Arapahoe's net earnings for the year 1954 (i.e., the month of December) totaled \$54,704, and this sum was duly reported to the Attorney General.

8. Answering paragraph (8) of the Motion, Arapahoe:

(a) Avers that in its Form P report filed with the Interstate Commerce Commission for the period ending December 31, 1955, Arapahoe reported a total of \$21,925,281 invested in carrier property as of January 1, 1955; that said figure properly included the facilities in the "Construction Work in Progress" account which were owned and used for common carrier purposes and which had been excluded from the valuation referred to in paragraph 7(d) above.

(b) Avers that in said Form P report Arapahoe reported a total of \$23,480,506 invested in carrier property as of December 31, 1955; that said figure was reported pursuant to a requirement of the said Commission that each carrier annually report the "money costs" of its completed facilities and construction work still in progress at year end; that said report does not show or purport to show the valuation of Arapahoe's property computed in accordance with Paragraph III of the final judgment;

(c) Admits that in its report to the Attorney General for the calendar year 1955, which was filed on April 13, 1956 and is attached as "Exhibit D" to the Motion, Arapahoe reported its valuation used as earnings basis (determined as of December 31, 1954) to be \$21,807,066;

(d) Avers that the Interstate Commerce Commission had not completed a tentative or issued a final valuation prior to the rendition by Arapahoe of its April 13, 1956 report to the Attorney General; that the valuation of its property was therefore determined by Arapahoe as of December 31, 1954 pursuant to the provisions of Paragraph III(b) of the said judgment; that the said valuation was based upon the records and ac-

counts of the carrier kept in accordance with the accounting methods set forth in the Uniform System of Accounts for Pipe Lines prescribed by the Interstate Commerce Commission; and that in determining said valuation, Arapahoe properly included in said valuation all property owned and used for common carrier purposes as of December 31, 1954, whether or not such property had, as of said date, been transferred from the "Construction Work in Progress" account.

(e) Admits the remaining allegations of paragraph (8).

9. Answering paragraph (9) of the Motion, Arapahoe:

(a) Avers that in its Form P report filed with the Interstate Commerce Commission for the period ending December 31, 1956; Arapahoe reported a total of \$23,480,506 invested in carrier property as of January 1, 1956. Said sum did not include Arapahoe's subsequent investment during 1956 in the other facilities hereinafter described;

(b) Avers that in said Form P report Arapahoe reported a total of \$30,991,532 invested in carrier property as of December 31, 1956; that said figure was reported pursuant to a requirement of the said Commission that each carrier annually report the "money costs" of its completed facilities and construction work still in progress at year end; that said report does not show or purport to show the valuation of Arapahoe's property computed in accordance with Paragraph III of the final judgment.

(c) Admits that in its report to the Attorney General for the calendar year 1956, which was filed on April 11, 1957 and is attached as "Exhibit E" to the Motion, Arapahoe reported its valuation used as earnings basis to be \$30,136,700;

(d) Avers that the Interstate Commerce Commission during 1956 was in the course of ascertaining the value of Arapahoe's property as of December 31, 1955, but did not complete its tentative or issue its final valuation until after April 11, 1957; that the valuation of its property was therefore again determined by Arapahoe itself; that the said valuation was based upon the records and accounts of the carrier kept in accordance with the accounting methods set forth in the Uniform System of Accounts for Pipe Lines prescribed by the Interstate Commerce Commission. More specifically, the

valuation as thus determined by Arapahoe for the common carrier property owned and used in connection with the new pipeline system which it had constructed and which was in service on December 31, 1955 was \$24,759,700, and said valuation was made as of said date. There was added thereto a further sum of \$5,377,000 by reason of the following facts: During the year 1956, Arapahoe purchased two complete trunk pipelines and a number of gathering systems, together with a one-sixth undivided interest in a third trunk pipeline, all of which had for some years been in operation as common carriers. A portion of these facilities had been valued by the Interstate Commerce Commission, and in such instances Arapahoe included in its valuation the latest final valuation of the Commission of said property, as adjusted in accordance with Paragraph III of the judgment. The value of the remainder of the facilities which had not been valued by the Interstate Commerce Commission, was determined by Arapahoe itself. Since the facilities thus acquired had been operated as separate systems and had not been owned and used by Arapahoe during the entire calendar year 1956, Arapahoe included them in its valuation used as earnings basis at the percentage of their valuation which the portion of the year in which they were owned and used by Arapahoe bore to the entire year, all as permitted by Paragraph III of the judgment;

(e) Avers that after April 15, 1957 the Interstate Commerce Commission completed a tentative valuation of Arapahoe's property as of December 31, 1955 and on June 10, 1957 gave notice thereof, as required by Section 19a(h) of the Interstate Commerce Act, by sending copies registered mail to the Attorney General, to other interested parties and to Arapahoe. A copy of the said tentative valuation is hereto attached, made a part hereof and marked Exhibit 3. No protest was filed within the thirty days prescribed by the Act by the Attorney General or any other interested party, and the said tentative valuation became final *sec. leg.*, as of the date thereof;

(f) As hereinabove averred, Arapahoe had estimated the valuation of the new pipeline system which it had constructed to have been \$24,759,700 as of December 31, 1955. As by reference to Exhibit 3 will more fully appear, the Interstate

Commerce Commission later made a final valuation of said property as of the same date of \$24,681,700. As hereinabove averred, Arapahoe determined that the valuation of the pipeline facilities which it had purchased during the year 1956 was \$5,377,000. Such facilities were not included in the final valuation determined by the Interstate Commerce Commission because they were not owned or used by Arapahoe on December 31, 1955. As alleged in the Motion, Arapahoe reported to the Attorney General that its total valuation for the year 1956 was \$30,136,700;

(g) Admits the remaining allegations of paragraph (9).

10. Answering paragraph (10) of the Motion Arapahoe:

(a) Denies that it has violated the terms or provisions of the judgment;

(b) Admits that it has not deducted from the valuation of its common carrier property, before computing its shipper-owners' permissible dividend, any sum representing a purported "share of the valuation of the company's carrier property financed by or attributable to the aforesaid loans of \$26,000,000 from third parties" and denies that any such deduction is required by the judgment;

(c) Denies that it has computed dividends in excess of either of its shipper-owner's share of 7% of the valuation of its property;

(d) Avers that the relationship between the sum of \$2,900,000 and the amount of any permissible dividend for any calendar year has no materiality under any term or provision of the judgment; that in any event, any measure of financial return must give full weight to the fact that the shipper-owners of Arapahoe, in addition to the purchase of capital stock in Arapahoe, by their commitments contained in the Throughput Agreement (Exhibit 1 hereto) and by the loan of their credit, have enabled Arapahoe to borrow the said sums from Metropolitan, and have rendered other and further valuable assistance and services to the new pipeline enterprise.

(e) Avers that Arapahoe paid no dividends to its shipper-owners in 1954 or 1955, that in 1956 it paid dividends aggregating \$580,000, and in 1957 dividends aggregating \$290,000; that Arapahoe has utilized net earnings available for dividends (supplemented by depreciation funds) to make sinking fund payments for the retirement of debt; that on January 31, 1957

it paid \$1,132,000 (i.e., the semi-annual mandatory and optional sums), and on July 31, 1957 a like sum of \$1,132,000 in partial retirement of its \$26,000,000 debt; that the principal amount of the outstanding debt has been reduced to \$23,736,000; that said sums were not paid to a shipper-owner and were unrestricted under the judgment and available for the payment of debts; that Arapahoe plans to make a similar payment of \$1,132,000 out of earnings supplemented by depreciation funds on January 31, 1958.

SECOND DEFENSE

55 11. As a second defense, Arapahoe avers that the Motion fails to state a cause of action upon which relief can be granted.

THIRD DEFENSE

12. As a third defense, Arapahoe avers that in filing its reports with the Attorney General it has at all times complied with the plain language of the judgment, which clearly and unambiguously permits it to report as "the valuation used as earnings basis" the valuation of its common carrier property as defined and determined pursuant to Paragraph III; to use said valuation in computing the 7% aggregate net earnings available for unrestricted corporate purposes (including dividends) which need not be retained and transferred to restricted surplus; and to report said 7% of valuation as available for the payment of dividends to its stockholders in accordance with the respective share of each; that (contrary to the allegations of paragraph (10) and the prayer of the Motion) there is no provision in said judgment which requires Arapahoe, in making its reports, to deduct from the valuation of its property some portion of the valuation as having been "financed by", "attributable to" or "the result of" the loan made by Metropolitan.

56 13. Paragraph III of the judgment provides simply that no defendant common carrier may pay to any shipper-owner in any year any dividends in excess of "its share of 7% of the valuation of such common carrier's property". "Valuation" is defined in Paragraph III(a) as meaning the latest final valuation of the carrier's property owned and used for common carrier purposes as made by the Interstate Commerce Commission. In the event the Commission has not determined the final valuation of the property, Paragraph

III(b) directs the carrier to determine the valuation of its property from its records and accounts kept in accordance with the accounting methods set forth in the Uniform System of Accounts for Pipe Lines prescribed by the Interstate Commerce Commission. The said Uniform System of Accounts does not prescribe any record, account or method for determining a portion or "share" which was "financed by" or "is the result of or attributable to monies obtained by the carrier from third parties".

14. The Interstate Commerce Commission determines valuation pursuant to Section 19a of Part I of the Interstate Commerce Act. Said section requires the Commission to ascertain "the value of all of the property owned or used by every common carrier" subject to the Act, and lists the various elements to be considered by the Commission in making its determination. Nowhere does the statute provide or even intimate that the Commission should deduct any amount from the value of a carrier's property as attributable to indebtedness. In accordance with the foregoing legislative direction, the final valuations determined by the Commission are valuations of all of the carrier's property. In making its final valuations, the Commission, in compliance with the statutory requirement, invariably separately classifies and values property "owned and used for common carrier purposes". It also classifies and values property "owned but not used" and property "used but not owned". No deduction is ever made from any of these classifications of valuation which is attributable to debt. In preliminarily determining its own valuations, Arapahoe, like the Commission, determined the value of all of its property owned and used for common carrier purposes and did not deduct any amount from its valuation on account of its indebtedness. When the Commission made its own final valuation, it valued Arapahoe's property as required by the Interstate Commerce Act. Pursuant to its invariable practice, it did not deduct from its valuation any amount attributable to the debt owed by Arapahoe to Metropolitan, even though fully informed as to the debt.

15. In determining the aggregate dividends it was permitted to pay to its two owners during the years in question,

Arapahoe complied with the plain language of the judgment by computing 7% of the valuation of its property. Since each of Arapahoe's stockholders held 50% of its issued and outstanding stock, each could have received 50% of 7% of the valuation of Arapahoe's carrier property if such amount had been earned and not required for other corporate purposes, such amount being each stockholder's "share" of unrestricted net earnings.

FOURTH DEFENSE

16. As a fourth defense, and in support of its averment that the judgment clearly and unambiguously permits it to
58 compute the aggregate sum available for dividends at 7% of valuation with no deduction attributable to debt, Arapahoe avers that all parties so understood and construed the judgment at the time of its entry and have so understood and construed the judgment ever since. More specifically, Arapahoe avers that:

17(a) All common carriers subject to the provisions of Part I of the Interstate Commerce Act are required by law to make, and do make, annual reports under oath to the Interstate Commerce Commission on a form provided by the Interstate Commerce Commission known as the Form P report. The fifty-nine defendant common carriers named in the judgment had regularly rendered such reports prior to the entry of the judgment. Many of such defendant common carriers had borrowed substantial sums of money for extending, constructing or acquiring common carrier facilities and had, as required by law, made full disclosure of the character and amount of such loans in their Form P reports. Said reports are a matter of public record, were made available by the Commission to the Attorney General, and had been analyzed and studied by the Attorney General before the judgment was entered. The Attorney General accordingly had knowledge when the judgment was negotiated and entered that a number of such debts were outstanding, and knew the identity of the defendant common carriers which had incurred the indebtedness and the amounts thereof.

59 (b) The Interstate Commerce Commission has annually for some forty years made a summary and abstract of statistics compiled from the annual Form

P reports filed by carriers for pipelines. This information is printed and issued by the Commission in or about August of each year and covers the preceding calendar year. The publication is an Official Document and is entitled "Statistics of Oil Pipe Line Companies Reporting to the Interstate Commerce Commission". The said Document annually summarizes and abstracts pertinent information with respect to every defendant common carrier and all other pipeline companies which report to the Commission. The Document includes tables which show as to each reporting carrier (*inter alia*) its investment in carrier property; total capitalization; par value or book liability of outstanding capital stock; funded debt unmatured; operating revenues and expenses; net income; status of depreciation account; dividends declared; and rate percent of dividends to the par value or book liability of outstanding stock. Said "Statistics of Oil Pipe Line Companies" are widely distributed throughout the country without charge by the Commission each year and copies are furnished to interested Government offices and departments, including the office of the Attorney General. The Attorney General also knew of the outstanding funded debts of the defendant common carriers from this additional source of information when the consent judgment was negotiated.

60 (c) The Attorney General also knew when the judgment was negotiated and entered that the Interstate Commerce Commission was making valuations pursuant to Section 19a of the Interstate Commerce Act of the properties of the defendant common carriers. Prior to the entry of the judgment, the Commission, pursuant to Section 19a(h) of the said Act, had given the required notice of all of its tentative valuations of said properties and had sent copies thereof by registered mail to the Attorney General calling attention to the statutory provision that said valuations would become final if no protest was filed within thirty days. The Attorney General did not in any case protest any of the said tentative valuations. Each of said tentative valuations disclosed upon its face whatever debts had been incurred by the various carriers and further disclosed that no deduction was made from valuation attributable to indebtedness.

(d) ICC valuations are a matter of public record which are published in official Valuation Reports, and the Commission's valuation methods had been fully and clearly explained.

in its Reports prior to the entry of the judgment. The Attorney General had analyzed and studied the Valuation Reports, knew the factors and elements of value used by the Commission and was fully aware that the Commission, in determining final valuations, valued the property of the carriers and did not deduct from any element of value any amount attributable to debt.

61 (e) The foregoing facts were well known not only to the Attorney General but also to the defendants when the judgment was negotiated and entered with the consent of all the parties. The defendants relied upon said facts when valuation for purposes of the dividend limitations imposed by Paragraph III was defined in the judgment as meaning the latest final valuation of each common carrier's property "as made by the Interstate Commerce Commission". The defendants did not consent, and would not have consented, to the different definition of valuation which the plaintiff seeks to impose upon Arapahoe in this proceeding.

18. Prior to entry of the judgment, extensive negotiations were conducted between the defendants and the Department of Justice with respect to the terms to be incorporated therein and submitted to this Court for its approval. It was the intention and understanding of the parties that the dividend limitation to be imposed by the judgment was based upon the full valuation of the defendant common carriers' properties and not upon some other figure derived by deducting from valuation some amount attributable to debt. The words "its (shipper-owner's) share of" were prefixed to the phrase "7% of valuation" to make it plain that in cases where the stock of a defendant common carrier was owned by more than one shipper-owner, or was owned in part by a shipper-owner and in part by third persons who were not shipper-owners, each shipper-owner could be paid its share of 7% of the entire valuation but that each could not receive 7% of the entire valuation. 62 The word "share" in law and in the context of the judgment means and was intended to mean the proprietary interest of an owner, stockholder or person otherwise entitled to participate in the net earnings of a defendant common carrier, and was not and could not have been intended to mean or include a claim of a creditor of a carrier.

19(a) As required by Paragraph VIII of the judgment, all the defendant common carriers have duly rendered annual reports to the Attorney General showing *inter alia*, "valuation used as earnings basis" and "total earnings available for distribution to owners or stockholders". The judgment does not require the defendants to report pipeline debts to the Attorney General. As heretofore averred, however, information with respect to debts is annually contained in the Form P reports and summarized in the annual "Statistics" published by the Commission. The Form P reports, the Commission's annual "Statistics" and the reports to the Attorney General under Paragraph VIII of the judgment all cover the preceding calendar year. It is, and has since the entry of the judgment in 1941, been the duty and practice of the Attorney General to study and analyze the Form P reports of the defendant common carriers and the annual "Statistics" published by the Commission, and to compare them with the annual reports to the Attorney General made pursuant to Paragraph VIII. The Attorney General has, therefore, always had current information with respect to the status of debts owned by the defendant common carriers and has known the identity of each of said defendants which has borrowed money, the type and terms of the
 63 loan, and the amount thereof which remains outstanding. Most of the defendant common carriers have borrowed substantial sums of money from third parties since the judgment was entered, have invariably reported the amount thereof in their Form P reports, and the unmatured balances of such debts have always been included in the Commission's annual "Statistics".

(b) Since the judgment was entered, the Interstate Commerce Commission has continued to make tentative and final valuations of the properties of the defendant common carriers. Since 1947, said valuations have been made annually. Pursuant to Section 19a(h) of the Interstate Commerce Act, the Commission has invariably sent copies of all tentative valuations to the Attorney General with notice of his right to protest said valuations within the time provided by law. Each of said tentative valuations disclosed upon its face whatever indebtedness was owed by the carrier and the fact that the Commission was not making any deduction from valuation attributable to debt. No protest of said valuations or method

of valuation by the Interstate Commerce Commission has ever been made by the Attorney General.

(c) In rendering their annual reports to the Attorney General pursuant to Paragraph VIII of the judgment of "the valuation used as earnings basis", all the defendant common carriers have invariably computed said valuation by using the latest final valuation made by the Interstate Commerce Commission as adjusted by the additions and deductions provided for by Paragraph III of the judgment. Some of said defendants have also included in their reports to the Attorney General detailed information showing precisely how the valuation used as earnings basis was derived. No defendant has ever
64 made the deduction from valuation attributable to debt which the plaintiff seeks to impose upon Arapahoe in this proceeding.

(d) All the said defendants have also annually reported to the Attorney General pursuant to Paragraph VIII of the judgment their "total earnings available for distribution to owners and stockholders". Ever since the judgment was entered, the defendants have disclosed upon the face of their respective reports that aggregate permissible dividends are computed by them by applying 7% of the valuation derived as hereinabove averred. This fact has also always been obvious from the factual data included in the Form P Reports, in the Commission's annual "Statistics", and in the Commission's annual valuations.

(e) All the said defendants have also annually reported to the Attorney General, pursuant to Paragraph VIII of the judgment, the amounts of money retained and transferred to segregated surplus. Ever since the judgment was entered, the defendants have disclosed upon the face of their reports that they were interpreting the judgment as permitting the use of all net earnings up to 7% of valuation for unrestricted corporate purposes, including dividends, and were only required to retain and transfer to segregated surplus sums in excess of 7%.

(f) By reason of the foregoing, the plaintiff has for sixteen years had full notice and actual knowledge of all the facts heretofore alleged in this paragraph, and until this Motion was filed on October 11, 1957, has consented to, acquiesced in and agreed with the reporting procedures and use of earnings described above.

20. Various Assistant Attorneys General in charge of the Antitrust Division of the Department of Justice have from time to time during the past sixteen years issued written rulings to various defendants interpreting the judgment for said defendants, and have agreed in writing with interpretations presented by defendants for consideration. Such rulings and agreements have confirmed, or accepted, the methods described above as having been used by the defendant common carriers in reporting their valuations used as earnings basis and computing the 7% sum available for unrestricted corporate purposes, including dividends.

21. On February 7, 1944, the Honorable Guy M. Gillette, then a member of the United States Senate and greatly interested in the question whether the defendant common carriers had fully and in all respects complied with the judgment, addressed an inquiry upon said subject to the Honorable Francis Biddle, then Attorney General of the United States. The Attorney General replied that he had examined the reports made by said defendants and that, with an exception not relevant to these proceedings, said reports reflected a general compliance with the judgment. Said correspondence was thereupon read into the Congressional Record, widely published in the trade and general press and came to the attention of the defendants. The said opinion from the Attorney General to the said Senator was written with both notice and knowledge of the fact that all the defendant common carriers were reporting their valuations used as earnings basis and computing the 7% sum available for unrestricted corporate purposes, including dividends, in the manner described above.

22. From time to time the Department of Justice has written letters to individual defendant common carriers protesting the method used in rendering their reports or asserting that their reports disclosed some variance from the judgment. No charge was ever made until the Motion was filed in this proceeding that any defendant had violated the judgment by failing to deduct amounts attributable to debt from valuation before computing permissible dividends. On one occasion which came to the attention of Arapahoe subsequent to the filing of the Motion in this proceeding, the Department of Justice in 1951 wrote to a defendant common carrier asking it to explain why it had not deducted the principal of its loan and borrowed capital from its valuation base before computing per-

missible dividends. The said defendant, in reply, explained that it was complying with the method of determining valuation set out in Paragraph III(a) of the judgment and that there is no provision therein requiring deduction of loans on borrowed capital from valuation. No protest was made by the Department to said explanation.

23. The facts hereinabove averred in this defense were known to and relied upon by Arapahoe's owners when they incorporated Arapahoe and they (or their affiliates) entered into the Throughput Agreement and other lending arrangements above referred to, and have been known to Arapahoe's officers and directors since Arapahoe commenced business in 1954. In entering into the arrangements for the construction of its pipeline system and for the financing thereof, in carrying on its operations and in rendering the reports charged by the plaintiff to be in violation of the judgment, Arapahoe relied upon its knowledge of said facts, and made its determinations of valuation and computed its permissible dividends in conformity with the long continued understanding, interpretation and construction of the judgment by all the parties thereto.

FIFTH DEFENSE

24. As a fifth defense, Arapahoe avers that by reason of the facts hereinabove and hereinafter stated in this Response, the plaintiff is estopped to advance the interpretation of the judgment which it urges by its Motion:

(a) This case involves not only Arapahoe, but affects all the twenty shipper-owners and fifty-nine common carriers (and their corporate successors) named as parties defendant to the judgment. These defendants include substantially all the integrated companies which do business east of the Rocky Mountains and comprise the great bulk of the oil industry.

(b) The Attorney General has authority to consent to the judgment, and has at all times thereafter had the authority and duty to interpret and enforce it.

(c) The Attorney General has since entry of the judgment consistently acquiesced in the reporting procedures of the defendant common carriers described above and has consistently interpreted the judgment as not requiring the deduction from valuation of any amounts attributable to debt, before computing permissible dividends.

(d) In reliance upon the practical construction of the judgment by the Attorney General, the defendant common carriers have invested hundreds of millions of dollars in common carrier pipeline facilities with the belief that 7% of the valuation of such facilities could be used for unrestricted corporate purposes, including the payment of debt and dividends. With the same reliance and understanding Arapahoe has itself invested nearly thirty million dollars. As heretofore averred the Attorney General has at all times been aware that substantial portions of such facilities were financed with borrowed funds, and knew the identity of the defendant common carriers which had incurred the indebtedness and the amount thereof.

(e) Likewise, in reliance upon the practical construction of the judgment by the Attorney General, the defendant shipper-owners have invested hundreds of millions of dollars in the capital stock of pipeline companies and pledged their credit under throughput agreements similar to the one attached as Exhibit 1.

(f) The interpretation which the Attorney General now for the first time seeks to impose would seriously prejudice the defendants and Arapahoe, and do grave injury to a large segment of the nation's economy.

SIXTH DEFENSE

25. As a sixth defense, Arapahoe avers that Great Lakes Pipe Line Company (Great Lakes) is a defendant common carrier in this case; that Pure and Sinclair are stockholders of Great Lakes and ship gasoline and other petroleum products through its pipeline system, and are defendant shipper-owners in this case. Arapahoe further avers that:

26. On December 28, 1938, the Interstate Commerce Commission entered its order in Valuation Docket No. 1218, Great Lakes Pipe Line Company, 48 ICC Val. Rep. 178, determining a final valuation of the property of Great Lakes at \$16,400,000. Said valuation was the latest final valuation of the Commission which preceded entry of the judgment and filing of the Petition in this cause hereinafter referred to.

27. On August 3, 1942, Great Lakes filed a Petition in this cause praying that the Court enter an order declaring that a plan fully described therein for incurring outside debt totaling \$12,000,000 and distributing the proceeds thereof among its

defendant shipper-owners in reduction of capital stock, was not in violation of the terms of the judgment. On the same day, this Court, acting through Justice Bolitha J. Laws, entered the order and supplemental judgment prayed for upon the consent of the Attorney General, defendants Pure and Sinclair and the other defendant shipper-owner stockholders of Great Lakes.

28. As by reference to the Great Lakes plan thus consented to by the Attorney General and approved by the Court will more fully appear:

(a) The claim made in the Motion in this proceeding that the judgment is violated by a failure to deduct an amount attributable to debt from valuation before computing permissible dividends, is inconsistent with the order and supplemental judgment of this Court entered with the approval and consent of the Attorney General finding the Great Lakes plan not to be in violation of the judgment.

(b) The Court, with the consent and approval of the Attorney General, approved as the valuation to be used as earnings basis the latest final valuation made by the Interstate Commerce Commission, and not some other figure derived by deducting from such valuation an amount attributable to debt.

(c) In each and every annual report rendered to the Attorney General following the entry by this Court of its order of August 3, 1942, Great Lakes has computed its valuation used as earnings basis from the latest final valuation made by the Interstate Commerce Commission, and not such valuation minus an amount attributable to debt.

71 (d) The officers and directors of Arapahoe have at all times been familiar with the facts stated above and said order of the Court; Arapahoe relied thereon in its computation of valuation used as earnings basis in the several reports to the Attorney General at issue in this proceeding.

(e) The issue raised by the Department of Justice in this Motion has already been determined by this Court in the order and judgment referred to above. Said order and judgment is accordingly *res judicata* as to said issue, and plaintiff is estopped from raising said issue in this proceeding.

Wherefore, Arapahoe moves the Court to dismiss plaintiff's Motion.

Respectfully submitted.

Charles I. Thompson,
CHARLES I. THOMPSON,

1035 Land Title Building, Philadelphia 10,
Pennsylvania.

Bynum E. Hinton, Jr.

BYNUM E. HINTON, JR.

1210 Shoreham Building, Washington 5, D.C.,

Attorneys for Arapahoe Pipe Line Company.

Certificate of service (omitted in printing).

72 [Duly sworn to by Charles I. Thompson; jurat omitted in printing.]

73 Exhibit 1 to response

THROUGHPUT AGREEMENT

Agreement made and entered into as of this fifteenth day of July, 1954, by and between The Pure Oil Company, an Ohio corporation (herein called "Pure"), Sinclair Crude Oil Company, a Delaware corporation (herein called "Sinclair"), and Arapahoe Pipe Line Company, a Delaware corporation (herein called "Arapahoe").

WITNESSETH:

Whereas, Pure and Sinclair (herein sometimes individually called "Oil Company" and collectively called the "Oil Companies"), are interested in the construction or acquisition by Arapahoe of a common carrier pipe line system (herein called the "Pipe Lines"), consisting of a pipe line for the transportation of petroleum or petroleum products, extending from Gurley Station, located near Gurley, Nebraska, to Long Station in the Long Pool south of Kimball, Nebraska, thence to Merino Station, located southwest of Merino, Colorado, thence to Schurr Station, located near Raymond, Kansas, and thence to Humboldt Station, located near Humboldt, Kansas (connecting therewith the Sinclair "Big Inch" line which runs to East Chicago), together with a pumping station at or near Merino Station, injection stations, a communications system and incidental facilities and equipment; and

Whereas, in order to finance the cost of construction and acquisition of the Pipe Lines, Arapahoe contemplates borrow-

ing not more than \$27,600,000 nor less than \$26,000,000 which is to be evidenced by Twenty-five Year 3.80% First Mortgage Pipe Line Bonds (herein called the "Bonds") to be issued under and secured by a Mortgage and Deed of Trust, to be dated as of August 1, 1954, from Arapahoe to The Chase National Bank of the City of New York, as Trustee (said Mortgage and Deed of Trust as originally executed and as it may from time to time be supplemented, modified or amended being herein called the "Mortgage");

Now, therefore, in consideration of the premises and of the mutual covenants herein contained, the parties hereto agree as follows:

1. **CONSTRUCTION OF PIPE LINES.** Arapahoe will use its best efforts to construct and acquire the Pipe Lines.

2. **REQUIRED SHIPMENTS BY OIL COMPANIES.** Pure and Sinclair each severally agrees with the other and with Arapahoe that during the term of this Agreement it will ship through the Pipe Lines during the period from the date on which the Pipe Lines shall have been completed or acquired to the stage where they are ready for commercial use in their entirety in the transportation of petroleum or petroleum products and are actually in such use, to and including the last day of the then current Accounting Period (as defined in section 3 hereof), and during each successive Accounting Period, fifty per cent (50%) of the amount of petroleum or petroleum products which will be sufficient to provide Arapahoe and which will actually provide Arapahoe, at its regularly published tariff rates, with a gross amount of cash revenue during such Accounting Period at least sufficient, when added to the other cash resources of Arapahoe at the time available (including, without limitation, cash revenues from petroleum or petroleum products shipped through the Pipe Lines by shippers other than Pure or Sinclair), to pay and discharge, when and as due or payable, all Expenses and Obligations of Arapahoe (as defined in section 4 hereof) which are or shall become due or payable in such Accounting Period; provided, however, that if the gross amount of cash revenue received in any Accounting Period by Arapahoe from all shipments (from whomsoever received) through the Pipe Lines, when added to its other cash resources at the time available, is sufficient to enable Arapahoe to pay and discharge, when and as due or payable, all Expenses and Obligations of Arapahoe which are or shall become due

or payable during such Accounting Period, and if the respective shipments of Pure and Sinclair through the Pipe Lines during such Accounting Period shall not have corresponded with the percentage required above of each of them, as between Pure and Sinclair there shall be no obligation on the one hand to increase the percentage shipped in any subsequent Accounting Period or otherwise to account for or make up any percentage deficiency, and, on the other hand, there shall be no credit in any subsequent Accounting Period for any percentage excess.

74. 3. DEFINITION OF ACCOUNTING PERIOD. The term "Accounting Period", as used in this Agreement, shall mean the period from

(a) the date on which the Pipe Lines shall have been completed or acquired to the stage where they are ready for commercial use in their entirety in the transportation of petroleum or petroleum products and are actually in such use, or

(b) August 1, 1955, whichever shall first occur, to and including the next succeeding February 1 or August 1, whichever is the earlier, and each successive six months' period ending on and including February 1 or August 1, as the case may be, during the term of this Agreement.

4. DEFINITION OF EXPENSES AND OBLIGATIONS. The term "Expenses and Obligations" of Arapahoe, as used in this Agreement, shall mean all expenses, obligations and liabilities whatsoever of Arapahoe, including, without limitation, all installments of interest on any indebtedness of Arapahoe, all payments of principal on any such indebtedness (whether due at maturity or by declaration or acceleration or otherwise, or by reason of sinking fund or prepayment requirements), all taxes, assessments and other governmental charges, all operating expenses, all expenditures for additions, betterments or other capital items, and all other obligations and liabilities, all when and as due or payable.

5. SHIPMENTS BY AFFILIATES OR OTHERS. All petroleum or petroleum products shipped through the Pipe Lines in any Accounting Period

(i) by an Affiliate of an Oil Company, or

(ii) by any third party who acquired from an Oil Company or an Affiliate thereof the petroleum or petroleum products so shipped, or the petroleum from which the petroleum products so shipped were manufactured, shall be deemed to have been

shipped by such Oil Company upon its furnishing to Arapahoe and the other Oil Company, in such Accounting Period, evidence of such relationship or such source of petroleum or petroleum products. The term "Affiliate", as used in this Agreement, shall mean a corporation more than 50% of the then outstanding voting stock of which is at the time owned, directly or indirectly, by one of the Oil Companies or by a corporation which at the time owns more than 50% of the then outstanding voting stock of such Oil Company; the term "voting stock" means stock at the time entitled to elect a majority of the board of directors, trustees or managers of the corporation in question.

6. CASH PAYMENTS BY OIL COMPANIES. If by reason of

(i) the non-completion or non-acquisition of the Pipe Lines by August 1, 1955, or

(ii) any failure or inability for any reason whatsoever (including, without limitation, any curtailment or cessation of operation of the Pipe Lines, or any refusal to accept shipments, or any governmental prohibition or restriction of shipments, or any condemnation, requisition or other act on the part of any governmental or military authority, or any act of God or of any public enemy) of Pure or Sinclair or both of them to perform its or their respective obligations under section 2 hereof, or for any other reason, Arapahoe, at the end of any Accounting Period, shall have insufficient available cash to pay and discharge all of its Expenses and Obligations then due and payable and remaining unpaid, Pure and Sinclair each severally agrees with the other and with Arapahoe that it will advance or cause to be advanced (as advance payment for transportation) to Arapahoe, on or before the last day of such Accounting Period, the amount in cash necessary (with the amounts in cash advanced by the other Oil Company) to enable Arapahoe to pay and discharge all such Expenses and Obligations, in accordance with the following:

(a) There shall first be calculated the amount (herein called the "Total Cash Deficiency") by which the Expenses and Obligations of Arapahoe due and payable and remaining unpaid at the end of such Accounting Period exceed the amount of cash held by Arapahoe at the end of such Accounting Period available for the payment of such Expenses and Obligations.

75 (b) There shall then be determined, separately, the gross cash revenues received by Arapahoe during such Accounting Period from shipments of petroleum or petroleum products made by each Oil Company (whether made during such Accounting Period or prior thereto).

(c) The Total Cash Deficiency for such Accounting Period, determined under subdivision (a) above, shall then be added to the total of the gross cash revenues received by Arapahoe during such Accounting Period from the shipments of petroleum or petroleum products made by both of the Oil Companies determined under subdivision (b) above, and the resulting total shall be allocated to the respective Oil Companies in the following percentages:

Sinclair	-----	50%
Pure	-----	50%
		100%

The respective resulting amounts are herein called the "Cash Quotas" of the respective Oil Companies for such Accounting Period.

(d) If the gross cash revenues received by Arapahoe during such Accounting Period from shipments of petroleum or petroleum products made by either Oil Company, determined under subdivision (b) above, is greater than such Oil Company's Cash Quota, as determined under subdivision (c) above, such Oil Company shall not be obligated to advance or cause to be advanced any cash to Arapahoe with respect to such Accounting Period.

(e) If the gross cash revenues received by Arapahoe during such Accounting Period from shipments of petroleum or petroleum products made by either Oil Company, determined under subdivision (b) above, is less than such Oil Company's Cash Quota, as determined under subdivision (c) above (the deficiency being herein called such Oil Company's "Tentative Deficit"), then such Oil Company shall advance or cause to be advanced to Arapahoe, as aforesaid, the proportion of the Total Cash Deficiency, as determined under subdivision (a) above, for such Accounting Period which such Oil Company's Tentative Deficit for such Accounting Period bears to the total of the Tentative Deficits of both of the Oil Companies for such Accounting Period. In case only one of the Oil Companies shall have a Tentative Deficit, the Oil Company having

a Tentative Deficit shall be obligated to advance or cause to be advanced to Arapahoe the entire total Cash Deficiency. If for any reason the above calculations shall not have been made at the end of any Accounting Period in such manner as to determine the precise respective obligations of the Oil Companies under the above subdivisions (a) to (e), inclusive, of this section 6, then and in such event, if for any reason Arapahoe at the end of any Accounting Period shall have insufficient available cash to pay and discharge all of its Expenses and Obligations then due and payable and remaining unpaid, each of the Oil Companies severally agrees with the other and with Arapahoe that it will advance or cause to be advanced, in cash, to Arapahoe, the percentage of such cash deficiency set forth opposite its name in subdivision (c) of this section 6, and thereafter, when such calculations have been completed, the Oil Companies and Arapahoe shall make such adjustments as shall be necessary to make the respective advances of the Oil Companies conform to the precise requirements of such calculations.

7. TREATMENT OF CASH PAYMENTS. Subject to any adjustments made pursuant to the last sentence of section 6 hereof, all payments made by Pure and Sinclair under the provisions of section 6 hereof (which payments are hereinafter called "Advances") shall be treated by Arapahoe as advance payments for the transportation of petroleum or petroleum products by Arapahoe delivered thereafter to it for shipment by the Oil Company making such payments, the Advances to be applied as a credit to the payment for the transportation of shipments first thereafter to be made by such Oil Company; but during the term of this Agreement there shall be no repayment in cash by Arapahoe of any amount of Advances so made, and in the event of any dissolution, winding up, liquidation or reorganization of Arapahoe or adjustment with respect to its debts, no payment of or on account of any Advances shall be made until after the prior payment in full of all other indebtedness of Arapahoe at the time outstanding. The Advances required to be made hereunder shall be made

76 without regard to any estimates current at the time of payment as to future shipments of petroleum or petroleum products. If six months after the expiration or termination of this Agreement or as soon thereafter as Arapahoe shall have no other borrowed indebtedness Arapahoe holds

The prices used in arriving at cost of reproduction were determined from a study of costs prevailing over a period of years both prior and subsequent to date of valuation.

COST OF LANDS AT TIME OF DEDICATION TO PUBLIC USE AND THEIR PRESENT VALUE.—The carrier owns and uses for common-carrier purposes 291.23 acres of land, the original cost and present value of which, by States, are as follows: Colorado, \$12,571 and \$7,958; Kansas, \$29,058 and \$12,013; Nebraska, \$4,690 and \$1,500; total, \$46,319 and \$21,471. It owns but does not use 5 acres in Kansas, leased to the Sinclair Pipe Line Company, the original cost and present value of which are \$909 and \$475, respectively. It uses for common-carrier purposes but does not own 104.21 acres, leased from private parties, the original cost of which was not determined. The present value, by States, is as follows: Colorado \$700, Kansas \$3,358, Nebraska \$4,094, total \$8,152.

COST OF RIGHTS-OF-WAY AT TIME OF DEDICATION TO PUBLIC USE AND THEIR PRESENT VALUE.—The carrier owns, through easements, and uses for common-carrier purposes, certain rights-of-way, of which the original cost as supported by accounting records, and their present value represented by the unamortized portion of original cost assignable to the unexpired service life of the rights-of-way on date of valuation, by States, are as follows: Colorado, \$53,466 and \$51,862; Kansas, \$214,192 and \$203,482; Nebraska, \$21,181 and \$19,910; total, \$288,839 and \$275,254. It owns but does not use certain rights-of-way in Kansas, classified as property out of service, the original cost and present value of which are \$936 and \$337, respectively.

PROPERTY HELD FOR PURPOSES OTHER THAN THOSE OF A COMMON CARRIER.—The investment of the carrier in miscellaneous physical property on date of valuation is stated in its books as \$32,078. If adjustments were made as indicated in our accounting examination, this amount would be increased to \$48,611, of which \$48,529 is applicable to 166.44 acres of noncarrier land in Kansas with buildings thereon, and 86 \$82 is applicable to 1.04 acres of noncarrier land in Colorado. The present value of these noncarrier lands is \$17,081 and \$52, respectively. The cost of reproduction new and less depreciation of the buildings are \$26,304 and \$6,698, respectively. Further information will be found in appendix 2.

The carrier owns and holds cash on hand and material and supplies in the amount of \$3,946,559, of which \$268,800 is necessary for its use as working capital, and that sum is, therefore, included in the final value stated elsewhere in this report. The remainder, \$3,677,759, is held for noncarrier purposes.

AIDS, GIFTS, GRANTS AND DONATIONS.—The carrier reports that it has received no aids, gifts, grants or donations, and none were found of record.

MATERIAL AND SUPPLIES.—The investment of the carrier in material and supplies on date of valuation is stated in its books as \$192. If adjustments were made as indicated in our accounting examination, there would be in this account \$8,355. Further information will be found in appendix 2.

FINAL VALUE.—After careful consideration of all facts herein contained, including appreciation, depreciation, going-concern value, working capital, and all other matters which appear to have a bearing upon the values here reported, the values, for ratemaking purposes, as of December 31, 1955, of the property owned or used by the carrier are found to be as follows:

Classification	Final value
Owned and used for common-carrier purposes-----	\$24,689,700
Owned but not used:	
Leased to Sinclair Pipe Line Company-----	700
Property out of service-----	34,500
Total-----	35,200
Used but not owned, leased from private parties-----	8,152
Total owned-----	24,716,900
Total used-----	24,689,852

The sum of \$268,800 is included in the value above stated as owned and used on account of working capital, consisting of cash and material and supplies.

No other values or elements of value to which specific sums can now be ascribed are found to exist.

APPENDIXES.—Attached hereto and made a part hereof are appendixes 1, 2 and 3.

Appendix 1 gives the explanatory text and summary sheets showing the allocation of mileage by States, and the classification of the cost of reproduction new and reproduction less depreciation, above set forth, in conformity with the classification of expenditures for investment in carrier property prescribed by us.

Appendix 2 shows in detail the history and organization of the carrier, moneys received by reason of the issue of capital stock and other securities, the net and gross earnings, the development of fixed physical property, investment in carrier property, original cost to date of common-carrier property, the general balance sheet statement, and other pertinent information.

87 Appendix 3 is a statement of the methods for determining working capital.

Reference is made to appendix 4, *Ajaz Pipe Line Corporation*, 50 Val. Rep. 1, which is hereby made a part hereof, for a statement of the methods employed and of the reasons for the differences between the various cost values reported.

The details respecting the figures here reported are on file in the valuation records of the Commission, open to public inspection, and subject to the direction of Congress. These details are referred to for greater particularity as to the matters herein stated.

An appropriate order will be entered.

88

APPENDIX 1

MILEAGE

The mileage of the carrier is classified in the following table:

Classification	Trunklines			
	Line miles	Loops and parallel lines	Other lines	All lines
Owned and used:				
In Colorado.....	120,240		3,951	124,191
Kansas.....	424,083	19,511	2,638	446,232
Nebraska.....	51,882		1,542	53,424
Total.....	596,205	19,511	5,491	624,147
Owned but not used, out of service.....	7,473	2,529		10,002
Total owned.....	603,678	22,340	5,131	634,149
Total used.....	596,205	19,851	5,131	624,147

PHYSICAL CHARACTERISTICS OF PROPERTY

LINE PIPE.—The main trunkline consists of about 51 miles of 8-inch, 9 miles of 10-inch, 32 miles of 12-inch, 307 miles of 18-inch and 169 miles of 20-inch plain end steel pipe with electric welded field joints. About 14 percent of the line pipe is lapweld, 28 percent is seamless and 58 percent is electric-weld. The various branch lines in Kansas consist of about 10 miles of 8-inch, 31 miles of 6-inch and 6 miles of 4-inch steel pipe.

LINE-PIPE FITTINGS.—The items inventoried under this account consist mainly of valves and other fittings including block valves throughout the line and at injection and delivery points.

PIPELINE CONSTRUCTION.—Pipeline construction includes clearing and grubbing, ditching and backfilling, installation of pipe, including cost of unloading, hauling, stringing, lining up, connecting, lowering and testing; borings, tunneling and casing at highway, railroad and river crossings; protective coating on pipe; cutting and replacing fences, gates, and drain tile; installing test points, ground beds and anodes for cathodic protection; and other miscellaneous installations such as river clamps, pipe supports and bridges, and mile posts and other markers. Machine dug trench varies with the size of pipe and the type of terrain from 30 inches wide and 40 inches deep to 40 inches wide and 60 inches deep. Protective coating, in general, consists of one coat of asphalt primer, enamel and asbestos felt. Rock shield was used in trenches through rock and river crossings.

BUILDINGS.—All buildings used in the operation of the pipeline have been allocated to this account. The office and control portions of the buildings at Merino station in Colorado and Shurr station in Kansas are of brick, while the pump room portions are constructed of coated steel paneling on steel frame. Other pumphouses are steel frame, metal clad buildings with the exception of those of Grove and Virgil in Kansas, which are metal clad, wood frame.

89 **PUMPING EQUIPMENT.**—The pumping units at three stations consist of a duplex piston power pump driven by a 42-horsepower gas engine. Other units consist of centrifugal pumps driven by electric motors. There are six 800-horsepower motors, two 500-horsepower, one 400-horsepower, two 350-horsepower, and one 100-horsepower, and ten motors

of less than 100-horsepower. The pumps driven by motors of less than 100-horsepower are mainly used as boosters.

OTHER STATION EQUIPMENT.—No station oil lines, oil manifolds or manifold fittings are inventoried to this account. The account includes service pipelines and fittings, power transmission systems, sump tanks and pumps, cranes and hoists; instruments and gauges, fire fighting equipment, water wells and other miscellaneous items.

OIL TANKS.—This account includes oil storage tanks and their appurtenances, such as tank fittings, stairways, ladders, protective coatings, tank mixers, and grades and firewalls. There are 22 tanks of welded steel and 11 of bolted steel. The sizes vary from 3,000 to 150,000-barrel capacity, there being three 3,000, six 5,000, nine 10,000, one 25,000, two 35,000, three 55,000, one 80,000, six 120,000, and two 150,000-barrel tanks.

COMMUNICATION SYSTEMS.—The carrier owns about 37.7 miles of telephone line in Kansas and certain terminal equipment used in connection with telephone lines leased from others.

OFFICE FURNITURE AND EQUIPMENT.—Office furniture and equipment are located at pumping stations.

VEHICLES AND OTHER WORK EQUIPMENT.—No vehicles have inventoried under this account. Other work equipment inventoried consists of line scrapers and pipe cutters.

ENGINEERING AND GENERAL EXPENDITURES

Engineering has been estimated at 1 percent on accounts 153 to 166, inclusive, but excluding allowance for general expenditures and interest.

General expenditures have been estimated at 1½ percent on accounts 153 to 166, inclusive, and on allowance for engineering, but excluding interest.

Interest during construction has been estimated at 5 percent per annum for a construction period of four months on each valuation section on accounts 153 to 166, inclusive, and on allowances for engineering and general expenditures.

SUMMARIES

All States, owned and used for common-carrier purposes

Ac- count	Classes	Cost of re- production new	Cost of re- production less depre- ciation
TRUNK LINES			
153	Line pipe	\$13,373,546	\$12,941,504
154	Line-pipe fittings	465,049	440,535
155	Pipeline construction	6,632,602	6,298,885
156	Buildings	284,220	265,274
158	Pumping equipment	305,015	288,215
160	Other station equipment	460,769	447,373
162	Oil tanks	1,739,172	1,653,021
163	Communication systems	16,643	16,643
164	Office furniture and equipment	1,815	1,791
165	Vehicles and other work equipment	5,784	5,236
166	Other property and overheads	1,212,453	1,153,829
	Total	24,497,068	23,412,356

In Colorado, owned and used for common-carrier purposes

Ac- count	Classes	Cost of re- production new	Cost of re- production less depre- ciation
TRUNK LINES			
153	Line pipe	\$2,554,277	\$2,406,602
154	Line-pipe fittings	113,856	114,102
155	Pipeline construction	1,274,760	1,223,770
156	Buildings	115,984	110,780
158	Pumping equipment	97,824	91,482
160	Other station equipment	178,570	173,310
161	Oil tanks	337,395	321,477
164	Office furniture and equipment	753	753
166	Other property and overheads	258,637	248,292
	Total	5,167,066	4,982,566

any Advances which have not been applied as a credit to the payment for the transportation of shipments of petroleum or petroleum products as aforesaid, the amount of such unapplied balance shall thereupon be repaid to the Oil Company or Oil Companies which made the Advances in question.

8. **DATE OF TERMINATION.** This agreement shall remain in full force and effect until, and shall terminate on, October 1, 1974; provided, however, that at any time when Arapahoe shall have no outstanding indebtedness maturing by its terms more than twelve months from the date of the creation thereof, any party hereto may terminate this Agreement by thirty days' notice to each of the other parties hereto.

9. **ASSIGNMENT; SUCCESSORS.** Except as provided in this section 9 and in section 10 hereof, neither this Agreement nor any interest therein may be assigned by Pure, Sinclair or Arapahoe; provided, however, that this Agreement shall inure to the benefit of and become binding upon the successor or successors of any of the parties hereto, whether such succession results by way of reorganization, merger, consolidation, sale of substantially all assets or otherwise.

10. **ASSIGNMENT.** Arapahoe may assign (by way of mortgage, pledge or otherwise) this Agreement and any or all of the rights of Arapahoe hereunder, as a whole or in part to the Trustee under the Mortgage, and no notice of such assignment need be given to Pure or Sinclair. Such assignee may enforce any and all of the terms and provisions of this Agreement, to the extent so assigned, as though such assignee had been a party to this Agreement. No action or failure to act on the part of Arapahoe shall adversely affect or limit in any way the rights of such assignee. An assignment pursuant to this section 10 shall neither release Arapahoe from any of its obligations under this Agreement nor constitute an assumption of any such obligations on the part of such assignee.

11. **COMMON CARRIER.** It is understood that Arapahoe will be a common carrier and, accordingly, the shipments made by Pure and Sinclair or any of their Affiliates through the Pipe Lines shall be at the regular published tariff rates of Arapahoe, and neither Arapahoe's obligations and duties as a common carrier nor the rights of Pure and Sinclair (or any Affiliate of either thereof) as shippers with respect to any petroleum or petroleum products tendered by them for shipment shall be any different than if this Agreement were not in existence. This un-

derstanding shall in no way affect or impair any of the obligations of Pure and Sinclair, respectively, hereunder.

12. OIL COMPANIES' OBLIGATIONS NOT AFFECTED. The several obligations and liabilities of Pure and Sinclair under this Agreement shall not be released, discharged or in any way affected by any reorganization, arrangement, compromise, composition or plan affecting Arapahoe, or any change, waiver, extension, indulgence or other action or omission in respect of any indebtedness or obligation of Arapahoe, whether or not Pure and/or Sinclair shall have had any notice or knowledge of any of the foregoing.

13. REPRESENTATIONS AND WARRANTIES. Pure and Sinclair each severally and for itself represents and warrants to the other and to Arapahoe that:

(a) it is a corporation duly organized and validly existing and in good standing under the laws of the state of its incorporation and has all requisite corporate power and authority to enter into this Agreement and to carry out the terms and provisions hereof; and

(b) there is no action, proceeding or investigation pending or threatened, and no term or provision of any charter, by-law, mortgage, indenture, contract, agreement, instrument, judgment, decree, order, statute, rule or regulation, which in any way prevents or interferes with or adversely affects the entering into by it of this Agreement, or the validity of this Agreement, or the carrying out of any of the terms or provisions of this Agreement.

Each Oil Company agrees that, when and as requested by Arapahoe, it will furnish to Arapahoe a written opinion of its counsel (Ralph W. Garrett, Esq., in the case of Sinclair, 77 and Vinson, Elkins, Weems & Searls in the case of Pure) or other counsel satisfactory to Arapahoe, addressed to Arapahoe or as Arapahoe may request, as to the matters covered by the foregoing clauses (a) and (b), and as to the corporate power and authority to enter into, and carry out, the due authorization, execution and delivery of, and the legality, validity, and binding effect of, this Agreement.

14. OIL COMPANIES' OBLIGATIONS SEVERAL. The agreements, representations and warranties on the part of Pure and Sinclair contained herein are not joint but several, and default in performance on the part of one shall in no way affect the obligations of the other.

15. HEADINGS. The headings in this Agreement are for purposes of reference only, and shall in no way limit or otherwise affect any of the provisions hereof.

16. COUNTERPARTS. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their officers thereunto duly authorized and their respective corporate seals to be hereunto affixed the day and year first above written.

THE PURE OIL COMPANY,
By R. B. KELLY, *Vice President.*

[CORPORATE SEAL]

Attest:

A. C. HUTCHESON,
Secretary.

SINCLAIR CRUDE OIL COMPANY,
By D. A. YOUNG, *President.*

[CORPORATE SEAL]

Attest:

A. V. SCHUMACHER,
Assistant Secretary.

ARAPAHOE PIPE LINE COMPANY,
By EARL W. UNRUH, *President.*

[CORPORATE SEAL]

Attest:

H. T. WINT,
Secretary.

Mortgage and deed of trust, dated as of August 1, 1954, made by and between Arapahoe Pipe Line Company, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the "Company"), party of the first part, and The Chase National Bank of the City of New York, a national banking association duly organized and existing under the laws of the United States of America, having its principal office at 18 Pine Street, in the Borough of Manhattan, the City and State of New York, as Trustee (hereinafter called the "Trustee"), party of the second part;

Whereas, the Company is in the process of constructing and acquiring certain pipe lines and related facilities for the transportation of petroleum and deems it necessary from time to time to borrow money to finance such construction and for other corporate purposes and to issue bonds therefor, and to mortgage and pledge its properties hereinafter described to secure the payment of the bonds, and to that end, having duly taken all action on the part of the Company necessary therefor, has duly authorized an issue of its bonds, to be known as "Twenty-five Year 3.80% First Mortgage Pipe Line Bonds" (hereinafter called the "Bonds"), in the aggregate principal amount of \$27,600,000, under and pursuant to the provisions of a mortgage and deed of trust in the form and terms of this Mortgage and Deed of Trust (hereinafter called the "Indenture"), and has duly authorized the execution and delivery of this Indenture; and

Whereas, the text of the Bonds, the coupons to be attached to coupon Bonds and the certificate of authentication of the Trustee to be executed on the Bonds are to be substantially in the following forms, with appropriate omissions, insertions, and variations as in this Indenture permitted:

(Forms of Coupon and Registered Bonds omitted as irrelevant.)

Whereas, all the requirements of law and the by-laws and certificate of incorporation of the Company have been fully complied with and all other acts and things necessary to make the Bonds, when executed by the Company, authenticated and delivered by the Trustee and duly issued as provided in this Indenture, the valid and legally binding obligations of the Company in accordance with their terms and to constitute this Indenture a valid, binding and legal instrument for the security of the Bonds in accordance with its and their terms, have been done and performed;

79 Now, therefore, this indenture witnesseth:

That in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the holders thereof and of the sum of One Dollar to it duly paid by the Trustee at or before the ensembling and delivery of these presents, and for other valuable considerations, the receipt whereof is hereby acknowledged, and in order to secure the payment of the prin-

cipal of and interest (and premium, if any) on the Bonds at any time issued and outstanding under this Indenture, according to their tenor and effect, and the performance and observance of all the covenants and conditions in the Bonds and herein contained, and to declare the terms and conditions upon and subject to which the Bonds are, and are to be, issued and secure, the Company has executed and delivered this Indenture and has granted, bargained, sold, warranted, aliened, remised, released, conveyed, assigned, transferred, mortgaged, pledged, set over and confirmed, and by these presents does grant, bargain, sell, warrant, alien, remise, release, convey, assign, transfer, mortgage, pledge, set over and confirm unto The Chase National Bank of the City of New York, as Trustee, and to its successors and assigns forever, all and singular the property hereinafter described, to wit:

Description of Mortgaged Property

(Granting Clause First, containing Description of Real Property, Pipe Lines, Rights-of-Way and Franchises, omitted as irrelevant.)

Granting Clause Second

Also all right, title and interest of the Company under, in and to the following agreement, an executed counterpart of which has been lodged with the Trustee simultaneously with the execution hereof:

"Throughput Agreement made and entered into, as of the fifteenth day of July, 1934, by and between The Pure Oil Company, an Ohio corporation, Sinclair Crude Oil Company, a Delaware corporation, and the Company, obligating The Pure Oil Company and Sinclair Crude Oil Company, among other things, to ship crude oil through the Pipe Lines as and to the extent therein provided (said Agreement, which terminates on or before October 1, 1974, being hereinafter referred to as the "Throughput Agreement")."

80 the Company, however, remaining liable to observe and perform all the conditions and covenants in said agreement provided to be observed and performed by it.

(Further Granting Clauses, Definitions, Form, Execution, Registry and Exchange of Bonds, Amount and Issue of Bonds and Withdrawal of Proceeds omitted as irrelevant.)

SINKING FUND

Section 4.01. The Company covenants that as and for a Sinking Fund for the retirement of Bonds it will, so long as any Bonds shall remain outstanding, pay to the Trustee on or before the last days of January and July in each year, commencing with the day immediately preceding the first interest payment date which is at least eighteen (18) months after the month in which the Pipe Lines are completed (but in no case earlier than July 31, 1956) or with July 31, 1957, whichever occurs first, and to and including January 31, 1979 (all of said dates being hereinafter referred to as "Sinking Fund payment dates"), that amount (increased, if it is not a multiple of \$1,000, to the next highest multiple of \$1,000) which is equal to Six Hundred Thousand Dollars (\$600,000) multiplied by a fraction the numerator of which is the total of the principal amounts of Bonds authenticated and delivered under the Indenture (except pursuant to Sections 2.02, 2.03, 2.06, 2.07, 5.03 or 14.03) on or prior to the Sinking Fund payment date on which such amount is to be paid, and the denominator of which is Twenty-seven Million Six Hundred Thousand Dollars (\$27,600,000). Said payments are hereinafter referred to as "mandatory Sinking Fund Payments" and are subject to reduction by the delivery of Bonds or the application of a credit as permitted by Section 4.02.

The Company may, at its option, in addition to the mandatory Sinking Fund Payment payable on any Sinking Fund payment date, pay to the Trustee for and as part of the Sinking Fund on such Sinking Fund payment date any amount which is a multiple of \$1,000 and which is not in excess of an amount equal to such mandatory Sinking Fund Payment (without regard to any reduction in such mandatory Sinking Fund Payment by the delivery of Bonds or the application of a credit as permitted by Section 4.02). The payments permitted by the next preceding sentence are hereinafter referred to as "optional Sinking Fund Payments". If the Company intends to exercise its right to make any payment to the Trustee pursuant to this paragraph on any Sinking Fund payment date, it shall deliver to the Trustee, at least 40 days prior to such Sinking Fund payment date, a written
 81 notice, signed by the Treasurer or an Assistant Treasurer of the Company, to that effect and specifying the amount which the Company so intends to pay. In case of the

failure of the Company, at or before the time so required, to give such notice of its intention, the Company shall not be permitted to make any payment pursuant to this paragraph on such Sinking Fund payment date.

(Balance of Sinking Fund Provisions omitted as irrelevant.)

(Remaining Provisions of Mortgage relating to Redemption of Bonds, Particular Covenants of the Company, Possession, Use and Release of Trust Estate, Remedies of the Trustee and Bondholders, Waiver of Individual Liability, Evidence of Rights of Bondholders and Ownership of Bonds, The Trustee, Consolidation, Merger and Sale, Defeasance, Supplemental Indentures and Miscellaneous omitted as irrelevant.)

82

Exhibit 3 to response

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., August 5, 1957.

Valuation Docket No. 1378 (1955 Report)

ARAPAHOE PIPE LINE COMPANY

NOTICE

The Interstate Commerce Commission, division 2, by its order of June 10, 1957, in Valuation Docket No. 1378, adopted a report containing its findings of the value of owned or used property of the Arapahoe Pipe Line Company for the year 1955, subject to review if protests were filed on or before July 25, 1957.

No protest having been filed within the period specified, and the proceedings not having been reopened for any other reasons, the said report is the report of the Commission and the valuation found therein is final.

HAROLD D. MCCOY, Secretary.

83 INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C.

Valuation Docket No. 1378

JUNE 10, 1957.

The Honorable the ATTORNEY GENERAL OF THE UNITED STATES.

The Honorable the GOVERNOR OF COLORADO,
Denver, Colo.

The Honorable the GOVERNOR OF KANSAS,
Topeka, Kans.

The Honorable the GOVERNOR OF NEBRASKA,
Lincoln, Nebr.

PUBLIC UTILITIES COMMISSION OF COLORADO,
Denver, Colo.

STATE CORPORATION COMMISSION OF KANSAS,
Topeka, Kans.

NEBRASKA STATE RAILWAY COMMISSION,
Lincoln, Nebr.

ARAPAHOE PIPE LINE COMPANY,
35 East Wacker Drive, Chicago 1, Ill.,
Care Mr. J. W. Meehan, President.

Attached hereto is a copy of the tentative valuation report on the Arapahoe Pipe Line Company as of December 31, 1955, adopted by the Commission on June 10, 1957.

By provision of the Interstate Commerce Act, Sec. 19a(h), a tentative valuation becomes final if no protest is filed within the time allowed by statute, so further affirmative action by the Commission is unnecessary. Formal notice will be given to all parties when either the attached report becomes final or the proceeding is reopened because of protest or other reason.

Also note the attached order provides that if such protest is filed, it must specify in detail each particular thing against which protest is directed. A copy of such protest should be transmitted to each of the above-named parties, and 14 additional copies filed with the Commission for official use.

Yours very truly,

HAROLD D. MCCOY, *Secretary.*

Valuation Docket No. 1378 (1955 Report)

ARAPAHOE PIPE LINE COMPANY

Decided June 10, 1957

Final value for ratemaking purposes of the property of the Arapahoe Pipe Line Company owned and used for common-carrier purposes found to be \$94,681,700 as of December 31, 1955, of property owned but not used \$35,200, and of property used but not owned \$8,152.

REPORT OF THE COMMISSION

Division 2, Commissioners FREAS, WINCHELL AND MURPHY
By Division 2:

The Arapahoe Pipe Line Company, hereinafter called the carrier, is a corporation of the State of Delaware. It is jointly controlled by the Sinclair Pipe Line Company and The Pure Oil Company through equal ownership of the outstanding capital stock.

LOCATION AND GENERAL DESCRIPTION OF PROPERTY AND OPERATIONS.—The carrier is engaged in the transportation of crude oil. It owns and operates a trunk pipeline system in the States of Colorado, Kansas and Nebraska, extending from Merino, Colo., and Gurley, Nebr., to Humboldt, Kans., where it connects with the pipelines of other carriers. The owned and used pipelines aggregate 624.147 miles, including 596.205 line miles, 19.811 miles of loops and parallel lines, and 8.131 miles of other lines. The carrier also owns but does not use 10.002 miles of trunk pipelines in Kansas, classified as property out of service, including 7.443 miles of line and 2.529 miles of loops and parallel lines. The property was acquired partly by purchase and partly by construction, as detailed in appendix 2. Partial operation was begun November 16, 1954, and complete operation December 13, 1954. During the year ended on date of valuation the carrier received into its system 30,927,533 and delivered out 30,088,397 barrels of crude oil.

CAPITAL STOCK AND LONG-TERM DEBT.—The carrier has outstanding on date of valuation a total of \$28,900,000 par value in stock and long-term debt, of which \$2,900,000 represents common stock and \$26,000,000 funded debt unmaturing. Further information will be found in appendix 2.

RESULTS OF CORPORATE OPERATIONS.—For the period November 16, 1954, to date of valuation, the aggregate operating expenses have been 32.52 percent of the operating revenues and the pipeline operating income for that period is \$2,656,512. No dividends have been declared.

ORIGINAL COST TO DATE.—The original cost of the common-carrier property owned and used by the carrier on date of valuation, as detailed in appendix 2, is found to be \$23,379,653, including \$46,319 for land and \$288,839 for rights-of-way. The original cost of the owned but not used property is found to be \$52,304, including \$909 for land and \$936 for rights-of-way.

INVESTMENT IN CARRIER PROPERTY.—The investment of the carrier in carrier property, including land and rights-of-way, on date of valuation, is stated in its books as \$23,480,506. If adjustments were made as indicated in our accounting examination, this amount would be increased to \$23,544,446.

Further information will be found in appendix 2.

85 **COST OF ORGANIZATION.**—The investment of the carrier in cost of organization on date of valuation is stated in its books as \$3,613.

COST OF REPRODUCTION NEW AND COST OF REPRODUCTION LESS DEPRECIATION.—The cost of reproduction new and cost of reproduction less depreciation of all property, other than land, rights-of-way and material and supplies, owned or used by the carrier on date of valuation, are as follows:

Classification	Cost of reproduction new	Cost of reproduction less depreciation
Owned and used:		
In Colorado.....	\$5,167,066	\$4,982,568
Kansas.....	17,822,476	17,072,387
Nebraska.....	1,447,537	1,357,401
Total.....	24,497,068	23,412,356
Owned but not used, out of service.....	109,199	28,929
Total owned.....	24,606,267	23,451,184
Total used.....	24,497,068	23,412,356

These amounts, classified in conformity with the uniform system of accounts for pipelines as prescribed by us, are shown in the summary sheets in appendix 1.

LEASED PIPELINE PROPERTY

The carrier on date of valuation grants and receives use of facilities of minor importance that are not listed in this chapter.

101 GENERAL BALANCE SHEET STATEMENT

The general balance sheet statement of the carrier as of date of valuation, follows:

ASSET SIDE

Investments:

Investment in carrier property	\$23,489,506
Cost of organization	3,613
Miscellaneous physical property	32,078
Total	23,516,197

Current assets:

Cash	3,938,204
Special deposits	465,966
Notes receivable	2,984,640
Revenue receivable	607,720
Accounts receivable	131,122
Material and supplies	192
Interest and dividends receivable	8,668
Other current assets	130,340
Total	8,266,786

Deferred debits:

Working-fund advances	200
Rents and insurance premiums paid in advance	765
Discount on funded debt	149,534
Total	150,499

Grand total 31,933,482

LIABILITY SIDE

Stock, capital stock	\$2,900,000
Long-term debt, funded debt unmatured	26,000,000

Current liabilities:

Accounts payable	61,565
Unmatured interest accrued	411,467
Taxes accrued	96,976
Other current liabilities	4,811

Total 575,019

UNITED STATES VS. ATLANTIC REFINING CO. ET AL. 85

Deferred credits and reserves:

Accrued depreciation—Carrier property-----\$839,458

Accrued depreciation—Miscellaneous physical property-----15³

Total-----839,473

Corporate surplus; earned surplus-----1,618,990

Grand total-----31,933,482

102

APPENDIX 3

ANALYSIS OF METHOD FOR DETERMINING WORKING CAPITAL

Working capital has been determined in accordance with the principles described in *Northampton and B. Rd. Co.*, 149 I.C.C. 263-272, under the method applied in *Muskegon Ry. and Nav. Co.*, 45 Val. Rep. 797-812, and other valuation cases. The basic data for such information as is contained herein have been obtained from the carrier's annual report to us for the year ended December 31, 1955, and from additional information supplied in response to a questionnaire sent to the carrier.

MATERIAL AND SUPPLIES.—The balance in material and supplies account on date of valuation, as adjusted, is \$8,355, no part of which represents scrap or obsolete material, nor is any part thereof held for additions and betterments to the property or for purposes other than common-carrier operation. Therefore, the working capital in the form of material and supplies is found to be about \$8,400.

CASH.—A consideration of operating revenues, operating expenses, and pipeline taxes other than income and excess-profits taxes, for the year ended on date of valuation, and balances in current operating asset and current operating liability accounts, and the account for taxes, exclusive of income and excess-profits taxes, accrued and unpaid on date of valuation, indicates that the receipt of cash earned in connection with service performed lagged behind the payments to be made on account of performing such service. Therefore, to provide for the delayed collections as well as a safe buffer fund of reserve cash on hand to take care of variations in the relation between cumulated receipts and cumulated payments due to seasonal or casual influences on traffic or expenses, the invested cash working capital used is found to be about \$260,400.

103

ORDER

At a Session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 10th day of June A.D. 1957.

The Commission, by division 2, having on the date hereof adopted a report containing its findings of the value of property of the Arapahoe Pipe Line Company, which report is hereby referred to and made a part hereof; and good cause appearing:

It is ordered, That on or before the 25th day of July 1957 any interested party may file with the Secretary of the Commission written protest against the findings in the said report, such protest to specify in detail the findings against which protest is made and the reasons for such protest;

And it is further ordered, That if no protest is filed within the period specified and the proceeding is not reopened for any other reason, the said report will be the report of the Commission and the valuation as found therein will be final.

By the Commission, division 2.

[SEAL]

HAROLD D. MCCOY, *Secretary*.

106

In United States District Court for the
District of Columbia

[File endorsement omitted.]

[Title omitted.]

Plaintiff's interrogatories

Filed January 22, 1958

The plaintiff requests that the defendant Arapahoe Pipe Line Company, by an officer or officers thereof, competent to testify in its behalf, answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. Did the Pure Oil Company (hereinafter referred to as Pure) and the Sinclair Pipe Line Company (hereinafter referred to as Sinclair) ship oil over the Arapahoe pipeline system in each of the years that Arapahoe has been in existence?

2. What was the total amount of oil shipped by Pure and Sinclair, respectively, over the Arapahoe pipeline system during each of the years that Arapahoe has been in existence, and

what percentage of Arapahoe's total shipping during each of those years did these amounts comprise?

3. What was the total shipping capacity of the Arapahoe pipeline system in each of the years 1954, 1955 and 1956?

4. What was the total amount of tariff paid each year by Pure and Sinclair, respectively, to Arapahoe for the transportation of oil over Arapahoe's system during each of the years of Arapahoe's existence?

Alfred Karsted,

ALFRED KARSTED,

Attorney, Department of Justice.

108 In United States District Court for the
District of Columbia

[Title omitted.]

Answers of defendant, Arapahoe Pipe Line Company, to interrogatories served on it by plaintiff on January 22, 1958

Filed February 3, 1958

Answer to Interrogatory No. 1: The Pure Oil Company has shipped oil over the Arapahoe pipeline system in each of the years that Arapahoe has been in existence. Sinclair Pipe Line Company has never shipped oil over the Arapahoe pipeline system:

Answer to Interrogatory No. 2: See attached Exhibits A-1 and A-2.

Answer to Interrogatory No. 3: See attached Exhibit B.

Answer to Interrogatory No. 4: See attached Exhibit C.

ARAPAHOE PIPE LINE COMPANY,

By [Signature not legible],

President.

109 [Duly sworn to by F. F. Steingraber; jurat omitted
in printing.]

Certificate of service (omitted in printing).

74 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

91 *In Kansas, owned and used for common-carrier purposes*

Ac- count	Classes	Cost of re- production new	Cost of re- production less depre- ciation
TRUNK LINES			
153	Line pipe.....	\$19,356,462	\$9,946,827
154	Line-pipe fittings.....	286,189	271,579
155	Pipeline construction.....	4,086,964	4,737,618
156	Buildings.....	181,558	118,424
158	Pumping equipment.....	125,943	118,186
160	Other station equipment.....	217,952	210,412
161	Oil tanks.....	829,535	798,929
163	Communication systems.....	16,643	16,643
164	Office furniture and equipment.....	935	911
165	Vehicles and other work equipment.....	5,784	5,236
166	Other property and overheads.....	895,110	880,353
	Total.....	17,882,475	17,072,367

In Nebraska, owned and used for common-carrier purposes

Ac- count	Classes	Cost of re- production new	Cost of re- production less depre- ciation
TRUNK LINES			
153	Line pipe.....	\$432,807	\$396,075
154	Line-pipe fittings.....	60,004	54,604
155	Pipeline construction.....	370,878	337,496
156	Buildings.....	36,678	31,070
158	Pumping equipment.....	81,548	78,567
160	Other station equipment.....	64,247	63,661
161	Oil tanks.....	342,242	330,624
164	Office furniture and equipment.....	127	127
166	Other property and overheads.....	32,706	35,184
	Total.....	1,447,837	1,357,401

In Kansas, owned but not used, property out of service

Ac- count	Classes	Cost of re- production new	Cost of re- production less depre- ciation
153	Line pipe.....	\$73,001	\$28,563
155	Pipeline construction.....	30,732	8,298
166	Other property and overheads.....	5,466	1,967
	Total.....	109,199	38,828

APPENDIX 2

INTRODUCTORY

The carrier is a corporation of the State of Delaware, having its corporate office at Wilmington, Del., and its general office at Chicago, Ill. It is jointly controlled by the Sinclair Pipe Line Company and The Pure Oil Company through equal ownership of the outstanding capital stock. The records do not indicate that the carrier, itself, controls any common-carrier corporation.

The property of the carrier has been operated by the Sinclair Pipe Line Company, as agent, from the date turned over to operation to date of valuation.

CORPORATE HISTORY

The carrier was incorporated June 17, 1954, under the general corporation law of the State of Delaware, as the Arapahoe Pipe Line Company. The nature of its business and the objects or purposes of incorporation are to engage in and carry on the business of transporting petroleum and its products by pipe line as a common carrier; to construct, purchase, or otherwise acquire, and to own, maintain and operate, pipe lines, gathering branches, oil tanks, and water and gas lines, in order to carry on such transportation; to acquire by purchase, lease or otherwise, and to own and hold such lands, rights-of-way, and other property as may be necessary, useful or proper in the construction, maintenance or operation of its pipe line system, including such lands and rights of way as may be necessary, useful or proper for pumping stations, oil tanks, water and gas lines, and telegraph and telephone lines or other appurtenances in connection with said business, and for other purposes.

The date of organization was June 17, 1954.

DEVELOPMENT OF FIXED PHYSICAL PROPERTY

The owned pipeline of the carrier on date of valuation, aggregating 634.149 miles of trunklines, was acquired partly by purchase and partly by construction.

The years in which the various portions of the line were constructed and the manner in which the carrier acquired the property are indicated in the following table:

76 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

93

Trunklines:

Acquired by purchase from:

Pure Transportation Company, Dec. 1, 1954 -----
In Nebraska: Gurley station via Enders to
Long station and miscellaneous station
lines, 1953-1954 -----

Mileage
51.373

51.373

Sinclair Pipe Line Company:

Dec. 1, 1954 ----- 22.861
March 31, 1955 ----- 20.727

43.388

In Kansas:

Grove station to Shurr
station:

1947 ----- 8.332
1953 ----- .023

Miscellaneous station lines,
1935-1953 ----- .439

Wash station lines, 1930-
1952 ----- .149

Virgil station to Burns-
Humboldt line:

1922 ----- 1.042
1927 ----- 2.743
1947 ----- .034

Miscellaneous station lines,
1930-52 ----- .097

Burns station to Vickers
Delivery:

1919 ----- 16.710
1933-1937 ----- .117

Loops and parallel lines,
1933 ----- 13.902

Acquired by construction, 1954-1955 ----- 539.188

In Nebraska:

Gurley station to Nebraska-Colorado State
line ----- 1.187
Miscellaneous station lines ----- .864

Total Nebraska ----- 2.051

In Colorado:

Nebraska-Colorado State line to Colorado-
Kansas State line ----- 120.240
Miscellaneous station lines ----- 3.951

Total Colorado ----- 124.191

Trunklines—Continued

Acquired by construction, 1954-1955—Continued

In Kansas:

Colorado-Kansas State line to Humboldt terminal.....	396.129
Loops and parallel lines.....	8.416
Miscellaneous station lines.....	1.939
Wash station to main line.....	2.252
Burns station to Vickers Jet.....	4.000
Loops and parallel lines.....	.022
Miscellaneous station lines.....	.014
Virgil station to main line.....	.051
Main line to Phillips Pipe Line Delivery.....	.114
Total Kansas.....	412.946

Total trunklines owned on date of valuation..... 634.149
 The carrier owns no gathering lines.

94 HISTORY OF CORPORATE FINANCING

SYNDICATING, BANKING AND OTHER FINANCIAL ARRANGEMENTS.—The records of the carrier do not indicate any syndicating arrangements.

CAPITAL STOCK.—The authorized capital stock of the carrier is \$3,500,000 par value, shares \$100 each, classified as common, of which \$2,900,000 par value has been issued for cash and is actually outstanding on date of valuation.

FUNDED DEBT.—The carrier has issued at par for cash a total of \$26,000,000 par value, 3.80 percent first mortgage Pipe Line Bonds, due September 1, 1979, all of which are actually outstanding on date of valuation. The expense incurred in the issuance of this debt aggregated \$156,577, of which \$707 has been charged to investment in carrier property account, \$6,335 to income account, amortization of discount on funded debt, leaving \$149,534 charged to deferred debits, discount on funded debt, at date of valuation.

RESULTS OF CORPORATE OPERATIONS

The results of corporate operations, as shown in the income and surplus accounts of the carrier, are given below.

INCOME STATEMENT.—A condensed summary of the income accounts for the period November 16, 1954 to date of valuation, follows:

Operating income:		Period
Operating revenues	-----	\$4, 611, 934
Operating expenses	-----	1, 490, 637
Net revenue from operations	-----	3, 121, 297
Pipeline taxes, other taxes	-----	464, 785
Pipeline operating income	-----	2, 656, 512
Other income:		
Income from miscellaneous nonoperating physical prop- erty	-----	Dr. 14
Interest income	-----	43, 443
Miscellaneous income	-----	222
Total other income	-----	43, 651
Total income	-----	2, 700, 163
Miscellaneous deductions from total income, miscellaneous in- come charges	-----	4, 504
Income available for fixed charges	-----	2, 695, 659
Fixed charges:		
Interest on long-term debt	-----	1, 070, 333
Amortization of discount on funded debt	-----	6, 336
Total fixed charges	-----	1, 076, 669
Income balance	-----	1, 618, 990

An examination shows that, under the present classification of accounts, \$9,000 recorded in the investment in carrier property account and representing the cost of an extension to the American Telephone and Telegraph Company's telephone line would be includible in the income account for the period as an item addible to operating expenses. If the income accounts of the carrier were adjusted to this extent the credit balance transferable to surplus would be decreased to \$1,609,990.

95 For the period November 16, 1954 to date of valuation, the aggregate operating expenses have been 32.52 percent of the operating revenues.

SURPLUS STATEMENT.—The balance in earned surplus on date of valuation, amounting to \$1,618,990, represents the credit balance transferred from income.

If the \$9,000 hereinbefore referred to in the income statement as transferable from investment in carrier property account were so transferred, the credit balance in earned surplus on date of valuation would be reduced to \$1,609,990.

DIVIDENDS.—The carrier has not declared any dividends on the capital stock to date of valuation.

INVESTMENT IN CARRIER PROPERTY

The investment of the carrier in carrier property, including land and rights-of-way, on date of valuation, is stated in its books as \$23,480,506, of which the following is a general analysis:

For property purchased from:

Pure Transportation Company, original cost as stated in the carrier property account of that company at date of sale recorded in this account..... \$1,161,065

Recorded money outlay..... \$1,116,179

Difference between consideration given and amount included in this account credited to accrued depreciation-carrier property..... 44,886

1,161,065

Sinclair Pipe Line Company, original cost as stated in the carrier property account of that company at date of sale, recorded in this account..... 255,566

Recorded money outlay..... 171,275

Difference between consideration given and amount included in this account credited to accrued depreciation-carrier property..... 84,291

255,566

Sinclair Pipe Line Company, recorded money outlay..... 73,900

Recorded money outlay:

Property acquired by construction, improvement and re-placements..... 21,920,930

Expense applicable to funded debt..... 707

Interest on funded debt..... 200,767

Construction expenditures..... 21,719,456

21,920,930

Construction work in progress..... 116,102

23,527,563

Less amounts recorded for retirements and other credits..... 47,057

Total recorded on date of valuation..... 23,480,506

96 There is included in the foregoing analysis \$16,533 representing the original cost of land classified herein as noncarrier, which under the present classification of accounts would be transferable to miscellaneous physical property account, \$8,163, the cost of materials purchased not used in construction, transferable to the material and supplies account, \$9,800, the cost of extension to telephone line of the American Telephone and Telegraph Company, transferable to operating expenses, and \$6,310 representing the original cost of property sold and not included in the inventory of property owned.

The carrier recorded in the investment account in carrier property account subsequent to date of valuation \$91,170, with concurrent credit to accrued depreciation-carrier property account, representing the difference between the consideration given the Sinclair Pipe Line Company in acquisition and the original cost of property as stated in the carrier property account of that carrier at date of sale, and \$12,776 representing delayed charges applicable to property included in the inventory of property owned on that date.

If the investment in carrier property account were adjusted to give effect as of date of valuation to the items referred to above, and if all the items then contained therein were taken at their recorded values, the balance would be increased by \$63,940, or to \$23,544,446.

COST OF ORGANIZATION

The investment of the carrier in cost of organization on date of valuation is stated in its books as \$3,613, all recorded money outlay.

ORIGINAL COST TO DATE

The original cost of the property owned or used by the carrier on date of valuation, all recorded money outlay by the carrier or its predecessors in ownership, is \$23,431,957, divided as follows:

Owned and used for common-carrier purposes	\$23,379,653
Owned but not used:	
Leased to Sinclair Pipe Line Company	\$900
Out of service	51,395
	52,304
Total	23,431,957

The amount of \$23,431,957 is distributed by uses, by States, and by primary accounts, as follows:

97. All States, owned and used for common-carrier purposes

Account	Classes	Amount
	TRUNK LINES	
153	Line pipe	\$13,701,027
154	Line-pipe fittings	513,645
155	Pipeline construction	5,843,807
156	Buildings	283,084
158	Pumping equipment	275,121
160	Other station equipment	506,632
161	Oil tanks	1,090,012
163	Communication systems	18,341
164	Office furniture and equipment	2,000
165	Vehicles and other work equipment	6,426
166	Other property	260,767
	Cost of organization	3,613
	Total (exclusive of land and rights-of-way)	23,044,465
151	Land	46,319
152	Rights-of-way	288,539
	Total (including land and rights-of-way)	23,379,323

In Colorado, owned and used for common-carrier purposes

Account	Classes	Amount
	TRUNK LINES	
153	Line pipe	\$2,608,473
154	Line-pipe fittings	131,521
155	Pipeline construction	1,087,313
156	Buildings	118,679
158	Pumping equipment	88,218
160	Other station equipment	155,194
161	Oil tanks	512,729
164	Office furniture and equipment	833
166	Other property	42,426
	Total (exclusive of land and rights-of-way)	4,876,386
151	Land	12,571
152	Rights-of-way	53,466
	Total (including land and rights-of-way)	4,942,423

82 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

98 In Kansas, owned and used for common-carrier purposes

Account	Classes	Amount
TRUNK LINES		
153	Line pipe.....	\$10,363,135
154	Line-pipe fittings.....	315,735
155	Pipeline construction.....	4,304,674
156	Buildings.....	130,475
158	Pumping equipment.....	116,428
160	Other station equipment.....	240,473
161	Oil tanks.....	818,258
163	Communication systems.....	18,341
164	Office furniture and equipment.....	1,027
165	Vehicles and other work equipment.....	6,426
166	Other property.....	144,867
Total (exclusive of land and rights-of-way).....		16,459,533
151	Land.....	29,058
152	Rights-of-way.....	214,192
Total (including land and rights-of-way).....		16,703,083

In Nebraska, owned and used for common-carrier purposes

Account	Classes	Amount
TRUNK LINES		
153	Line pipe.....	\$639,419
154	Line-pipe fittings.....	65,399
155	Pipeline construction.....	451,820
156	Buildings.....	33,928
158	Pumping equipment.....	75,473
160	Other station equipment.....	70,983
161	Oil tanks.....	358,035
164	Office furniture and equipment.....	140
166	Other property.....	12,974
Total (exclusive of land and rights-of-way).....		1,704,163
151	Land.....	4,990
152	Rights-of-way.....	21,181
Total (including land and rights-of-way).....		1,730,034

99 Not allocated to States, owned and used for common-carrier purposes

Account	Classes	Amount
TRUNK LINES		
	Cost of organization.....	\$3,613

UNITED STATES VS. ATLANTIC REFINING CO. ET AL. 83

In Kansas, owned but not used, leased to Sinclair Pipe Line Company

Account	Classes	Amount
	TRUNK LINES	
151	Land	3900

In Kansas, owned but not used, property out of service

Account	Classes	Amount
	TRUNK LINES	
153	Line pipe	\$20,590
155	Pipeline construction	20,869
	Total (exclusive of rights-of-way)	50,459
152	Rights-of-way	936
	Total (including rights-of-way)	51,395

MISCELLANEOUS PHYSICAL PROPERTY

The investment of the carrier in miscellaneous physical property on date of valuation is stated in its books as \$32,078. If the amount of \$16,533, hereinbefore referred to under the investment in carrier property account as transferable to this account were so transferred, the balance on date of valuation would be increased to \$48,611, of which \$48,529 represents the cost of 166.44 acres of land in the State of Kansas; together with improvements thereon, and \$82 the cost of 1.04 acres in Colorado.

AIDS, GIFTS, GRANTS AND DONATIONS

The carrier reports that it has received no aids, gifts, grants or donations, and none were found of record.

100

MATERIAL AND SUPPLIES

The investment of the carrier in material and supplies on date of valuation is stated in its books as \$192, representing \$120 for empty containers and \$72 for small fittings. If the \$8,163, hereinbefore referred to under the investment in carrier property account as transferable to material and supplies, were so transferred, the balance in material and supplies account on date of valuation would be increased to \$8,355.

& Cromwell and a member of the Bar of this Court, and I appear with Hugh H. O'bear, Esq. as attorney for Interstate Oil Pipe Line Company ("Interstate") and Tuscarora Pipe Line Company, Limited ("Tuscarora").

I make this affidavit in support of the motion by Interstate and Tuscarora to dismiss the Government's "Motion for Order Carrying Out Final Judgment" with respect to Arapahoe Pipeline Company ("Arapahoe") filed October 11, 1957, and of the petition by Interstate and Arapahoe under Paragraph X of the judgment herein dated December 23, 1941.

The basis for both applications is that the Government is attempting in violation of the Rules of Civil Procedure and the requirements of appropriate notice, to utilize the processes of this Court, through the form of a motion for carrying out the judgment directed against one of the pipeline companies claimed to be subject to the judgment, to obtain an interpretation and construction of the judgment which will adversely affect the defendants (originally 79 companies) and other persons subject to the judgment herein, among whom are Interstate and Tuscarora. The Government has not served on Interstate or Tuscarora a copy of its motion addressed to Arapahoe. To the best of such information as is available to me, it has served a copy on Arapahoe only.

Interstate (successor to Oklahoma Pipe Line Company) and Tuscarora (previously known as Tuscarora Oil Company, Limited) are each a defendant common carrier as defined in Paragraph II of the judgment herein and subject to Paragraphs III and VIII thereof.

Interstate and Tuscarora have each since 1942 regularly filed the annual reports to the Attorney General required by Paragraph VIII of the judgment, which have set forth the valuations as earnings basis and the earnings paid to shipper-owners.

The Government, in proceeding against Arapahoe, has applied on the foot of the judgment entered December 23, 1941 in the original action, United States v. The Atlantic Refining Company, et al., Civil Action No. 14060.

The Government's understanding of the impact upon all defendant common carriers of the proceeding which it has undertaken against Arapahoe is underlined by the following testimony of Assistant Attorney General Hansen before the Antitrust Subcommittee of the Committee on the Judiciary of the House of Representatives (85th Cong., 1st Sess.) on October 22, 1957 (p. 376):

128

"Mr. KEATING. And then this year you have brought some actions for the enforcement of the decree?

"Mr. HANSEN. I brought four of them.

"Mr. KEATING. And you have other proceedings under contemplation?

"Mr. HANSEN. Yes, sir.

"Mr. KEATING. Study?

"Mr. HANSEN. Yes, sir; *and the matters that are involved in these four actions may also be applicable to other defendants.*

"Mr. KEATING. And this is the first action taken under this 1941 decree, am I correct?

"Mr. HANSEN. First legal action taken.

"Mr. KEATING. First legal action.

"Mr. HANSEN. Yes, sir.

"Mr. KEATING. And it involves many questions including the interpretation of the 1941 decree, or at least that is incidental.

"Mr. HANSEN. Yes, sir; *and there are different questions in each of the four which we feel are important areas that should be determined.*"

[Italic supplied.]

The Government also recognizes that the outcome of its proceeding against Arapahoe would, at least, affect the other defendants in the action.

In a hearing before Judge Richmond B. Keech on January 27, 1958, Alfred Karsted, Esq., an attorney in the Department of Justice, appearing for the United States in connection with the four motions heretofore filed including the motion addressed to Arapahoe, had the following colloquy with the Court (p. 14):

"The COURT: Let me interrupt you to ask a question:

"Mr. KARSTED, if this is not an appropriate time to ask, you need not answer it and I will take no offense to it.

"Put it the other way. If the Arapahoe case be decided favorable to them, would you be in a position to differentiate between Arapahoe and the other defendants herein?

129 "Is that a fair question?

"Mr. KARSTED. That is a fair question.

"If Arapahoe should win its motion—No, we would not be in a position—I think I can say confidently we would not be

in a position to urge that any other defendant was in violation."

[Italic supplied.]

Later on in the hearing, Mr. Karsted made the following statement (pp. 25-6):

"MR. KARSTED. The Government takes the position they [the defendants other than Arapahoe] are not [virtually respondents in the Arapahoe proceeding].

"The reason we proceeded against Arapahoe was that we wanted to present one factual situation to the Court, because our argument is primarily one of law; it is not one of fact, and we simply wanted to present one simple factual situation. We picked Arapahoe because it was the simplest.

"Now we take the position that the other defendants are not bound by any judgment that is entered in the Arapahoe case. As Mr. Wilson implied, they *may* be able to come in if we should ever move against them, *and show that because of some other factors they do not fall within the decision of the Arapahoe case.* But that was our reason for selecting the Arapahoe situation, and our position is that they are not parties respondent to the motion that is filed against Arapahoe."

[Italic supplied.]

Mr. Karsted's statement is a very careful one, turning on the technical use of the terms "parties respondent" and "bound". But it is also a question-begging one, since the question of whom he chose to name as a "respondent" and who would therefore be "in contempt" of any order entered on the Government's motion is not the real question. The real question is whether a determination by this Court on the Government's motion will affect the other parties and privies to the

judgment of December 23, 1941, and whether those
130 persons are therefore entitled to be given notice and to be heard. Mr. Karsted's reference to the argument being "primarily one of law" is in itself a clear indication of what the Government considers the significant aspect of its motion, an aspect which directly affects Interstate and Tuscarora. And his position that the Government would be bound by the outcome of the motion against Arapahoe while other defendants might be able to distinguish the case (see italics, *supra*) presents a curious contradiction.

I understand that on Thursday of last week, January 30, 1958, the following stipulation was entered into by the United States, on the one hand, and twelve companies on the other, and was "Approved and So Ordered" by Judge Keech:

"The following named defendants in this cause, having given notice that their interests may be adversely affected in the proceedings brought on by the motion of the United States against Arapahoe Pipe Line Company entitled 'Motion for Order for Carrying Out Final Judgment'.

"It is hereby stipulated that the following Defendants are parties in interest in such proceedings; provided that the factual issues now before the Court are not to be expanded beyond the additive points of variance as indicated by the Court in the hearing of January 27, 1958."

I understand that the above stipulation was negotiated among three attorneys representing certain of the parties to the judgment of December 23, 1941 and attorneys of the Department of Justice on Tuesday, January 28, 1958, and that on that same morning those attorneys applied to Judge Keech for a hearing, which was held.

I have read the transcript of that hearing. Although I had been apprised that the three attorneys representing certain of the parties were going to wait upon the Department of Justice attorneys on January 28, 1958, I was not apprised of any intention on their part to enter into any stipulation which
131 purported in any way to define or limit the nature of proof or argument on behalf of a party or a privy to the judgment of December 23, 1941. Nor was I apprised of their intention to make an application to the Court on that date, or of the fact that an application had been made or was being heard until after the fact.

I was advised of said stipulation and hearing as the result of a long distance telephone conversation between one of the attorneys, John J. Wilson, Esq., and my partner, Roy H. Steyer, Esq., which took place between 12:30 p.m. and 1:00 p.m. on Tuesday, January 28, 1958. I was also advised that my clients were invited to sign the stipulation, along with other defendants and privies. Originally I was told the time limit within which to sign was Wednesday noon, January 29, 1958; subsequently this was extended to Thursday noon, January 30, 1958.

Interstate and Tuscarora have not signed this stipulation, on my advice, because of the significant problems presented by the

"providing" clause of the stipulation and its implications to their rights.

I believe that the Government's entire approach on its motion is misconceived, because in contravention of the Rules of Civil Procedure. This has been compounded by negotiations in which, I understand, the attorneys for the Government, while apparently recognizing (contrary to the import of Mr. Karsted's last quoted statement) that the parties and privies to the judgment have a right to participate in the proceedings and to be given notice thereof, have nevertheless insisted that such parties and privies at the outset enter into a stipulation that might in some way limit their rights.

It is for the protection of the rights of Interstate and 132 Tuscarora, therefore, that their motion has been made to dismiss the Government's motion with respect to Arapahoe.

Inasmuch as the Government has now indicated its course, however, explicit judicial pronouncement of the clear and unequivocal meaning of the term "its share of seven percentum (7%) of the valuation of such common carrier's property" in Paragraph III of the judgment entered December 23, 1941 and of the term "valuation used as earnings basis" in Paragraph VIII of the judgment has become of immediate concern to my clients Interstate and Tuscarora—and to defendant common carriers generally—because they have made their annual reports to the Attorney General, fixed dividend policies and paid dividends, borrowed money, made improvements and additions, and conducted their operations over the past 16 years on the basis of the clear and unequivocal meaning of these terms, which at this late date have now been brought into dispute by the Government. They are required to continue to file such reports, fix dividend policies and make plans for operations and expansion, all of which are vitally affected by the now-disputed provision.

For that reason, Interstate and Tuscarora are simultaneously filing a petition praying an order be entered directing:

(1) that the term "its share of seven percentum (7%) of the valuation of such common carrier's property" in Paragraph III of the judgment entered December 23, 1941 means that proportion of 7% of the entire valuation (as valuation is fully and carefully defined in subparagraph III(a) of the judgment) which each shipper-owner's equity interest in the common car-

Exhibit A-1 to answers

ARAPAHOE PIPE LINE COMPANY

2. Crude oil shipped over the Arapahoe trunk system during years of existence 1954 thru 1957

Shipper	1954		1955		1956		1957	
	Barrels	Percent	Barrels	Percent	Barrels	Percent	Barrels	Percent
The Pure Oil Company	752,166	42.46	8,171,489	27.31	8,675,709	20.20	7,954,881	16.15
Subtotal	752,166	42.46	8,171,489	27.31	8,675,709	20.20	7,954,881	16.15
Ashland Oil & Refining Co.	65,815	3.72	467,287	1.56	1,303,625	4.20	2,874,196	5.84
Sohio Petroleum Co.	255,971	16.15	1,155,030	3.86	596,579	1.39	16,987	.03
Midwest Refining Co.	83,615	4.72	421,652	1.41				
Maroon Crude Oil Co.	29,996	1.69	52,547	.18				
Petroleum Specialties Co.	27,807	1.57	29,461	.10	203,963	.48	194,768	.40
Sinclair Crude Oil Co.	525,950	29.69	14,706,491	49.15	20,600,545	47.97	22,702,298	46.10
Clark Oil & Refining Co.			1,473,352	4.92	2,364,632	5.51	2,659,760	5.40
Vickers Petroleum Co.			3,183,722	10.64	4,940,960	11.51	4,877,569	9.75
Lakeside Refining Co.			23,018	.08	100,602	.23	102,214	.21
Leonard Refining Co.			53,446	.18	645,005	1.50	744,750	1.51
Naph-Sol Refining Co.			86,942	.29				
Western Crude Marketers			29,700	.10				
Globe Oil & Refining Co.			67,502	.22				
British American Oil Prod. Co.					1,417,209	3.30	3,093,795	6.28
Crystal Refining Co.					108,871	.25	200,251	.41
Phillips Petroleum Co.					547,667	1.28	2,377,180	4.83
Stanollind Oil Purchasing Co.					936,473	2.18		
Aurora Gasoline Co.							44,885	.09
Indiana Oil Purchasing Co.							1,462,790	2.97
Total other shippers	1,019,154	57.54	21,749,550	72.69	34,266,131	79.80	41,291,463	83.85
Grand total	1,771,320	100.00	29,921,039	100.00	42,941,840	100.00	49,246,344	100.00

rier bears to the total equity interest in the common carrier;

133 (2) that the term "valuation used as earnings basis" in Paragraph VIII means the entire valuation as defined in subparagraph III(a) of the judgment;

(3) that the valuation on the basis of which permissible dividends to shipper-owners may be computed is the entire valuation as defined in subparagraph III(a) of the judgment, without deducting any indebtedness whatsoever from such valuation; and

(4) that defendant common carriers are permitted to pay dividends to their respective shipper-owners on the basis of such computation.

Arthur H. Dean.

ARTHUR H. DEAN.

Sworn to before me this 4th day of February 1958.

[SEAL]

John J. Murphy, Jr.,

JOHN J. MURPHY, JR.,

Notary Public, State of New York.

Residing in Kings County, Kings Co. Clk's No. 24-2826185.

Certificate Filed in New York County Clk's. Commission

Expires March 30, 1959.

134 In the United States District Court
for the District of Columbia

[File endorsement omitted.]

Civil Action No. 14060

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

Statement pursuant to stipulation of January 30, 1958

Filed February 12, 1958

Now come the undersigned defendants pursuant to the stipulation approved by the Court herein on January 30, 1958 and file this statement herein:

(1) Defendants severally incorporate herein and submit all of the attached statements of additive points of variance from the factual situation disclosed in the motion of the plaintiff,

111

Exhibit A-2 to answers

ARAPAHOE PIPE LINE COMPANY

2. Crude oil gathered by Arapahoe gathering system during years of existence 1956 and 1957

Gathered for—	1956		1957	
	Barrels	Percent	Barrels	Percent
The Pure Oil Company.....	10,306,123	50.22	10,540,789	48.55
Subtotal.....	10,306,123	50.22	10,540,789	48.55
Clark Oil & Refining Co.....	254,951	1.24	81,405	.37
Fowler Petroleum Co.....	13,051	.07		
Stanolind Oil Purchasing Co.....	931,610	4.54		
Western Crude Marketers, Inc.....	223,845	1.09	300,711	1.38
Standard Crude Oil Co.....	8,791,504	42.84	9,002,758	47
Champlin Oil & Refining Co.....			151,950	.70
Continental Oil Co.....			508,600	2.34
Indiana Oil Purchasing Co.....			1,074,359	4.95
Monsanto Chemical Co.....			51,893	.24
Total others.....	10,214,961	49.78	11,170,875	51.45
Grand total.....	20,521,084	100.00	21,711,664	100.00

112

Exhibit B to answers

ARAPAHOE PIPE LINE COMPANY

3. Shipping capacities of the Arapahoe trunk system during years of existence 1954 thru 1957

	1954	1955	1956	1957
To Merino:				
Gurley to Potter.....	18,000	18,000	18,000	18,000
Potter to Merino.....	42,000	42,000	42,000	42,000
Adena to Merino.....			33,600	33,600
Goodall to Merino.....			23,000	23,000
Merino to Schurr.....	91,700	91,700	91,700	110,000
Schurr to Humboldt.....	129,000	129,000	129,000	129,000
Sterling System (undivided 1/4th interest):				
Sterling to Gurley.....			11,500	11,500
Sterling to Merino.....			7,500	7,500

Exhibit C to answers

ARAPAHOE PIPE LINE COMPANY

4. Amount of tariff received for transportation by trunk line and gathering systems during years of existence 1954 thru 1957

Paid by—	1954	1955	1956	1957
The Pure Oil Company	\$110,947	\$1,372,891	\$2,201,042	\$2,021,213
Subtotal	110,947	1,372,891	2,201,042	2,021,213
Sohio Petroleum Co.	20,918	85,033	39,474	1,123
Ashland Oil & Refining Co.	4,778	39,607	144,334	203,797
Mid-West Refineries, Inc.	14,907	75,072		
Maroon Crude Oil Co.	5,156	9,033	29	
Petroleum Specialties Co.	5,118	5,400	26,051	23,826
Sinclair Crude Oil Co.	37,881	1,873,918	3,239,280	3,294,870
Globe Oil & Refining Co.		4,955		
Clark Oil & Refining Co.		209,120	304,101	203,694
Naph-Sol Refining Co.		8,855		
Vickers Petroleum Co.		470,961	744,070	735,099
Leonard Refining Co.		9,252	92,330	97,148
Western Crude Marketers, Inc.		5,200	22,385	30,071
Lakeside Refining Co.		3,835	15,913	12,831
British American Oil Prod. Co.			152,765	385,028
Crystal Refining Co.			2,243	15,744
Fowler Petroleum Co.			1,305	
Phillips Petroleum Co.			93,213	403,476
Standard Oil Purchasing Co.			115,925	
Aurora Gasoline Co.				2,729
Champlin Oil & Refining Co.				15,106
Continental Oil Co.				50,469
Indiana Oil Purchasing Co.				141,591
Monsanto Chemical Co.				5,189
Total Other	\$8,754	2,809,351	4,953,428	5,712,171
Grand Total	119,701	4,182,242	7,154,470	7,733,384

114 In the United States District Court for the District of Columbia

[File endorsement omitted.]

[Title omitted.]

Stipulation

Filed January 30, 1958

The following named defendants in this cause, having given notice that their interests may be adversely affected in the proceedings brought on by the motion of the United States against Arapahoe Pipe Line Company entitled "Motion for Order for Carrying Out Final Judgment."

It is hereby stipulated that the following Defendants are parties in interest in such proceedings; provided, that the factual issues now before the Court are not to be expanded beyond the additive points of variance as indicated by the Court in the hearing of January 27, 1958.

CONTINENTAL PIPE LINE COMPANY,

By HAROLD S. SKINNER.

GREAT LAKES PIPE LINE COMPANY,

By R. L. WAGNER.

SHELL PIPE LINE CORPORATION,

By WILLIAM T. KINNEY.

SERVICE PIPE LINE COMPANY,

By FREDERICK M. ROWE.

MAGNOLIA PIPE LINE COMPANY,

By JOHN E. MCCLURE.

THE TEXAS PIPE LINE COMPANY,

By J. W. EMISON.

SINCLAIR PIPE LINE COMPANY AS SUCCESSOR
TO DEFENDANT, SINCLAIR REFINING CO.,

By BYNUM C. HINTON, Jr.

CITIES SERVICE PIPE LINE COMPANY, (SUC-
CESSOR TO EMPIRE PIPELINE COMPANY),

By MARVIN B. WEAVER.

TEXACO-CITIES SERVICE PIPE LINE COMPANY,

By J. W. EMISON.

TEXAS-NEW MEXICO PIPE LINE COMPANY,

By J. W. EMISON.

PLANTATION PIPE LINE COMPANY,

By J. W. EMISON.

HUMBLE PIPE LINE COMPANY,

By JOSEPH J. SMITH, Jr.

For the United States:

Alfred Karsted,

ALFRED KARSTED,

Attorney, Department of Justice.

Approved and so Ordered:

Richmond B. Keech,

RICHMOND B. KEECH,

United States District Judge.

16 In the United States District Court
for the District of Columbia

[File endorsement omitted.]

Civil Action No. 14060

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING COMPANY; * * * OKLAHOMA PIPE
LINE COMPANY; * * * TUSCARORA OIL COMPANY, LIMITED;
ET AL., DEFENDANTS

*Petition for order to confirm rights under the judgment of
December 23, 1941*

Filed February 5, 1958

*To The Honorable, The Judges of the United States District
Court for the District of Columbia:*

The petition of the defendant common carriers Interstate Oil Pipe Line Company ("Interstate") and Tuscarora Pipe Line Company, Limited. ("Tuscarora"), by their attorneys, respectfully alleges and shows to the Court:

1. Interstate (successor to Oklahoma Pipe Line Company) and Tuscarora (previously known as Tuscarora Oil Company, Limited) are "defendant common carriers" as defined in paragraph II of the judgment herein entered December 23, 1941.

2. As such, they are subject to the terms of the judgment, including the requirements of paragraph III that

"No defendant common carrier shall credit, give, grant, or pay, directly or indirectly, through or by any means or device whatsoever, to any shipper-owner in any calendar year, commencing as of January 1, 1942, any earnings, dividends, sums of money or other valuable considerations derived from transportation or other common carrier services which in the aggregate is in excess of its share of seven per centum (7%) of the valuation of such common carrier's property, * * * but shall be permitted (insofar as the Interstate Commerce and Elkins Acts are concerned) to credit, give, grant, or pay

117 said percentum," and the provisions of paragraph VIII

Requiring each defendant common carrier to render a report to the Attorney General of the United States each year showing for the preceding year, among other things, "the

valuation used as earnings basis" and "earnings, dividends, payments, or benefits credited, paid, granted, or given to all stockholders or owners."

3. As of December 31, 1957, Interstate had outstanding long-term funded debt in the amount of \$50,000,000. At all times since 1947, Interstate has had debt owing to others than its shipper-owner.

4. As of December 31, 1957, Tuscarora had outstanding long-term funded debt in the amount of \$5,940,000. At all times since prior to the entry of the judgment of December 23, 1941 herein, Tuscarora has had debt owing to others than its shipper-owner.

5. Interstate and Tuscarora have each since 1942 regularly filed the annual reports to the Attorney General required by Paragraph VIII of the judgment of December 23, 1941 and each of such reports has clearly indicated as the "valuation used as earnings basis", on the basis of which the permissible 7% dividend has been computed, the total valuation of the properties as defined in subparagraph III(a) of the judgment, without deducting any indebtedness whatsoever. This has been done in accordance with what is understood to be the universal practice of all defendant common carriers and with the full knowledge of the Attorney General. Dividends have been paid to shipper-owners by Interstate and Tuscarora, and operating policies have been carried out, in reliance on such computation.

6. Interstate and Tuscarora, as well as their shipper-owners, have relied not only on the clear and unambiguous meaning of Paragraph III of the judgment as the basis for computing dividends to shipper-owners and the clear and unambiguous meaning of Paragraph VIII of the judgment as the basis for annual reports to the Attorney General, but also upon the acceptance by the Attorney General over a period of 16 years of their reports which showed on their face the application of the clear and unambiguous meaning of such terms.

7. The Government's "Motion for Order for Carrying Out Final Judgment" addressed to Arapahoe Pipe Line Company and filed October 11, 1957, prays an order directing Arapahoe "before computing the permissible dividends for its shipper-owners, to deduct from the valuation of its property owned and used for common carrier purposes the share of such valuation

that is the result of or attributable to monies obtained by the carrier from third parties for extending existing or constructing or acquiring new common carrier facilities."

8. As a result of the construction thus asserted in said "Motion for Order for Carrying Out Final Judgment", a controversy now exists between the Government and the petitioners, as well as other defendant common carriers, as to the meaning of Paragraphs III and VIII of the judgment of December 23, 1941, and of the rights and obligations of said defendant common carriers thereunder.

9. Until a decision by the Court affirming the clear and unambiguous meaning of such terms and provisions is made, the operating policies of petitioners and of other defendant common carriers, and their ability to carry out and to expand their services as common carrier pipelines, will be hampered.

10. This petition is filed pursuant to Paragraph X 119 of the judgment of December 23, 1941, which states:

"X. The jurisdiction of this case is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this judgment, for the modification hereof upon any ground, and for the enforcement of compliance herewith in the manner set forth above. No future modification hereof shall impose any liability upon any defendant for any act or conduct performed prior to the date of such modification, in excess of the liability imposed by paragraph VI hereof."

Wherefore, petitioners respectfully pray the Court to enter an order directing:

- (1) that the term "its share of seven percentum (7%) of the valuation of such common carrier's property" in Paragraph III of the judgment entered December 23, 1941 means that proportion of 7% of the entire valuation (as valuation is fully and carefully defined in subparagraph III(a) of the judgment), which each shipper-owner's equity interest in the common carrier bears to the total equity interest in the common carrier;
- (2) that the term "valuation used as earnings basis" in Paragraph VIII means the entire valuation as defined in subparagraph III(a) of the judgment;
- (3) that the valuation on the basis of which permissible dividends to shipper-owners may be computed is the entire

valuation as defined in subparagraph III(a) of the judgment without deducting any indebtedness whatsoever from such valuation; and

(4) that defendant common carriers are permitted to pay dividends to their respective shipper-owners on the basis of such computation.

ARTHUR H. DEAN AND DOUGLAS,
OBEAR & CAMPBELL,
Southern Building, Washington 5, D.C.

By Hugh H. Obear,
HUGH H. OBEAR,

*Attorneys for Interstate Oil Pipe Line Company and
Tuscarora Pipe Line Company, Limited.*

SULLIVAN & CROMWELL,
*48 Wall Street, New York 5, N. Y.,
Of Counsel.*

Dated: February 5, 1958.

In the United States District Court for the
District of Columbia

[Title omitted.]

Motion to dismiss government's motion and for further relief

Filed February 5, 1958

Now come Interstate Oil Pipe-Line Company ("Interstate") and Tuscarora Pipe Line Company, Limited ("Tuscarora"), and on the complaint herein filed December 23, 1941, the judgment entered December 23, 1941, the order with respect to Great Lakes Pipe Line Company entered August 3, 1942, the motion of plaintiff United States of America entitled "Motion for Order for Carrying Out Final Judgment" filed October 11, 1957 and praying relief against Arapahoe Pipe Line Company, the annexed affidavit of Arthur H. Dean, sworn to February 4, 1958, and the annexed Petition of Interstate and Tuscarora, move the Court:

1. To grant an order dismissing the motion of the United States entitled "Motion for Order for Carrying Out Final Judgment", on the grounds that

(a) the motion, while in form a motion to carry out the judgment of December 23, 1941 against Arapahoe Pipe Line

Company, is in substance a motion to construe and interpret Paragraph III of said judgment for the purpose and
122 with the effect of adversely affecting thereby each party to this action and each person subject by its terms to said judgment, including Interstate and Tuscarora; and

(b) in violation of Rules 5, 65(d) and 71 of the Federal Rules of Civil Procedure, a copy of said motion has not been served upon Interstate or Tuscarora, or their attorneys, or upon the other parties and persons, in addition to Arapahoe, who would be adversely affected or who might be prejudiced by the order sought by said motion.

2. To grant an order as prayed in the annexed petition of Interstate and Tuscarora, directing (1) that the term "its share of seven per centum (7%) of the valuation of such common carrier's property" in Paragraph III of the judgment entered December 23, 1941 means that proportion of 7% of the entire valuation (as valuation is fully and carefully defined in subparagraph III(a) of the judgment) which each shipper-owner's equity interest in the common carrier bears to the total equity interest in the common carrier; (2) that the term "valuation used as earnings basis" in Paragraph VIII means the entire valuation as defined in subparagraph III(a) of the judgment; (3) that the valuation on the basis of which permissible dividends to shipper-owners may be computed is the entire valuation as defined in subparagraph III(a) of the judgment, without deducting any indebtedness whatsoever from such valuation; and (4) that defendant common carriers are permitted to pay dividends to their respective shipper-owners on the basis of such computation, on the grounds that

123 (a) the Government in its motion entitled "Motion for Order for Carrying Out Final Judgment" has asked the Court to construe and interpret said terms and provisions in a manner contrary to their clear and unambiguous meanings;

(b) Interstate and Tuscarora, as well as "defendant common carriers" generally, have for the past 16 years filed reports to the Attorney General pursuant to Paragraph VIII of the judgment, fixed dividend policies and paid dividends to shipper-owners as permitted by Paragraph III of the judgment, and carried out operating policies, in all of which they have relied on the clear and unambiguous meaning of such terms and provisions, as have defendant common carriers gen-

erally, and, further, Interstate and Tuscarora are required to continue to file such reports, fix dividend policies and prepare and carry out operating policies on the basis of the meaning of these terms and provisions, which have now at this late date been called into question by the Government; and

(c) until the clear and unambiguous meaning of these terms and provisions is affirmed by the Court, the ability of the defendant common carrier pipelines to continue to meet the expanding demand for common carrier services is seriously threatened.

ARTHUR H. DEAN AND DOUGLAS,
OBEAR & CAMPBELL,
Southern Building, Washington 5, D.C.

By Hugh H. Obear,
HUGH H. OBEAR,

Attorneys for Interstate Oil Pipe Line Company and
Tuscarora Pipe Line Company, Limited.

SULLIVAN & CROMWELL,
48 Wall Street, New York 5, N.Y.
Of Counsel.

Dated: February 5, 1958.

125

NOTICE

Please take notice that this Notice and the foregoing and annexed Motion, Petition, Affidavit and Memorandum of Points and Authorities in support of said Motion and Petition will be filed in United States District Court for the District of Columbia on February 5, 1958. The rules of the Court require you, in the event you oppose the granting of said motion, to file and serve a Memorandum of Points and Authorities in opposition within the time specified in said rules.

Hugh H. Obear.
HUGH H. OBEAR.

126

Attachment to motion

AFFIDAVIT OF ARTHUR H. DEAN

STATE OF NEW YORK,
County of New York, ss:

Arthur H. Dean, being duly sworn, says:

I am an attorney-at-law, a member of the firm of Sullivan

This statement is made in support of the prayer of the joint statement filed herein by Plantation and other defendants pursuant to the Stipulation of January 30, 1958.

PLANTATION PIPE LINE COMPANY,
By WILLIAM SIMON,

Its attorney.

William Simon,
WILLIAM SIMON,

1300 Connecticut Avenue, Washington 6, D.C., Decatur 2-7260.

Attorney for Plantation Pipe Line Company.

[Duly sworn to by S. V. Kane, jurat omitted in printing.]

151

Exhibit i to statement

APRIL 14, 1943.

Civil Action No. 14060.

The Honorable FRANCIS BIDDLE,
Attorney General of the United States, Washington, D.C.

DEAR SIR: We attach, hereto, report of Plantation Pipe Line Company to the Attorney General of the United States, as required under paragraph VIII of the above Action.

Yours very truly,

C. R. YOUNTS, *President.*

By [S] S. V. KANE, *Treasurer.*

SVK:gw.

Enc.

Copied 2-6-58/ JSJ:bsh.

Attachment to Exhibit 1

PLANTATION PIPE LINE COMPANY

REPORT TO THE ATTORNEY GENERAL OF THE UNITED STATES
FOR THE YEAR 1942, AS REQUIRED BY PARAGRAPH VIII OF
THE FINAL JUDGMENT ENTERED IN THE CASE OF CIVIL
ACTION NO. 14060 IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF COLUMBIA ENTITLED
UNITED STATES OF AMERICA, PLAINTIFF

VS:

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

1. Valuation used as Earnings Basis	\$19,800,896
2. Total Earnings available for distribution to owners	1,386,063
3. Earnings, dividends, payments or benefits credited, paid, granted or given to all stockholders or owners	None
4. Amounts of money transferred to or withdrawn from the surplus retained pursuant to paragraph V of the final judgment	1,145,465

PLANTATION PIPE LINE COMPANY,

(S) S. V. KANE, Treasurer.

Date April 14, 1943.

152

Exhibit 2 to statement

DEPARTMENT OF JUSTICE,
WASHINGTON, D.C., April 22, 1943.

Address Reply to "The Attorney General" and refer to initials
and number A.H.B. 59-8-213.

Mr. S. V. KANE,

Treasurer, Plantation Pipe Line Company, Healey Building,
Atlanta, Georgia:

DEAR SIR: This is to acknowledge receipt of your letter of
April 14, 1943, transmitting the report of your company for
the year 1942, as required by Paragraph VIII of the final
judgment in the case of United States of America v. The
Atlantic Refining Company, et al., Civil Action 14060. The
report has been placed on file in the Department.

As to Item 1 of your report, please submit a statement as
to the calculation of adjusted valuation. Was adjusted valua-
tion arrived at in strict conformity with Paragraph II(a) of
the judgment?

As to Item 4 of your report, are we to assume that all of the \$1,145,465 transferred to the special surplus account has been withdrawn from such account as permitted by Paragraph V of the final judgment? We note that the total earnings available for distribution to owners amounted to \$1,386,063 and that \$1,145,465 was transferred to the special surplus account. Please advise the disposition of the difference of \$230,598.

We would appreciate advice on the above matters in order that we may go forward with an audit of your report.

Very truly yours,

(S) Tom C. Clark,
TOM C. CLARK,
Assistant Attorney General.

Copied 2-6-58/JSJ:bsh.

153

Exhibit 3 to statement

MAY 14, 1943.

Mr. TOM C. CLARK,

Assistant Attorney General, Department of Justice, Washington, D.C.

DEAR MR. CLARK: In your letter of April 22, 1943, you requested a statement of the calculation of adjusted valuation as shown on our report of Plantation Pipe Line Company for the year 1942.

Since Plantation Pipe Line Company was under construction as at December 31, 1941, and has not had a subsequent valuation by the Valuation Section of the Interstate Commerce Commission, the \$19,800,896 shown as Item 1 on the report represents actual cost of the Plantation system as at December 31, 1942, excluding Land, Rights-of-Way and Depreciation. In the absence of a basic valuation by the Commission, we feel that this figure is conservative and will not exceed the figure allowed when the basic valuation is made.

In reply to the inquiry made in the third paragraph of your letter, as to Item 4 of our report, the amount of \$1,145,465 represents the excess of earnings over 7% of our valuation indicated in Item 1 of said report. The cash represented by Item 4 was used to retire debt incurred prior to December 23, 1941. This debt is in the form of Serial Notes held by The Mutual Benefit Life Insurance Company and the Mutual Life Insurance Company of New York, and was incurred for the

purpose and the proceeds were expended in constructing common carrier property.

In response to your inquiry as to the disposition of the difference of \$230,598, we wish to state that this figure does not exist, as the total shown in Item 2, \$1,386,063, and in Item 4, \$1,145,465, are separate and distinct items.

We trust the above information will enable you to proceed with an audit of our report.

Yours very truly,

C. R. YOUNTS, *President.*

By S. V. KANE, *Treasurer.*

SVK:gw.

154

Exhibit 4 to statement

APRIL 12, 1949.

Civil Action No. 14060

The Honorable TOM C. CLARK,
Attorney General of the United States, Washington 25, D.C.

DEAR SIR: Attached, hereto, is Plantation Pipe Line Company's report to the Attorney General of the United States, for the year 1948, as required under Paragraph VIII of the above captioned case.

We call your attention to item 4, "Earnings Transferred to and Retained in Surplus Pursuant to Paragraph V of the Final Judgment", in the amount of \$934,416. During the year 1948, cash in the amount of \$200,000 was not retained by this company, but was used to retire debt incurred prior to December 23, 1941, such debt being represented by serial notes held by Central Hanover Bank and Trust Company (these notes formerly owned by The Mutual Benefit Life Insurance Company, Newark, New Jersey, and The Mutual Life Insurance Company of New York). This debt was originally incurred for the purpose of and the proceeds thereof expended in constructing and acquiring common carrier property. The balance of item 4, specifically \$734,416, has been deposited in cash in a restricted special bank account in the Trust Company of Georgia, Atlanta, Georgia.

Yours very truly,

PLANTATION PIPE LINE COMPANY,

(S) S. V. KANE, *Treasurer.*

SVK:gw.

Enc.

United States of America, and in the response of the defendant, Arapahoe Pipe Line Company.

(2) Said defendants further adopt the defenses averred on behalf of Arapahoe Pipe Line Company in its aforesaid response and additional defenses of said defendants individually as set forth in the attached statements.

Wherefore, said defendants pray that the motion of the plaintiff, United States of America, against the defendant, Arapahoe Pipe Line Company, be in all things denied and that the Court determine that the final judgment entered herein on December 23, 1941 does not require any defendant common carrier, before computing the permissible dividends for its shipper-owners, to deduct from the valuation of its property owned and used for common carrier purposes the share of such valuation that is the result of or attributable to monies obtained by the carrier from third parties for extending existing or constructing or acquiring new common carrier facilities.

135 MAGNOLIA PIPE LINE COMPANY,

By Ross Madole,

ROSS MADOLE,

P.O. Box 900,

2311 Magnolia Building, Dallas 1, Tex.

John E. McClure,

JOHN E. MCCLURE,

626 Washington Building, Washington 5, D.C.

CITIES SERVICE PIPE LINE COMPANY.

(Formerly named Empire Pipe Line Company),

By Narvin B. Weaver,

NARVIN B. WEAVER,

703 Ring Building, Washington 6, D.C.

HENRY L. O'BRIEN,

70 Pine Street, New York 5, N.Y.

GENTRY LEE,

Cities Service Building, Bartlesville, Okla.

PARK HOLLAND, Jr.,

70 Pine Street, New York 5, N.Y.

Attorneys for Cities Service Pipe Line Company

(Formerly Empire Pipe Line Company).

SERVICE PIPE LINE COMPANY,

By Hammond E. Chaffetz,

HAMMOND E. CHAFFETZ,

800 World Center Building, Washington 6, D.C.

PLANTATION PIPE LINE COMPANY,

By William Simon,

WILLIAM SIMON,

1300 Connecticut Avenue, Washington 6, D.C.

136. GREAT LAKES PIPE LINE COMPANY,

By John J. Wilson,

JOHN J. WILSON,

Whiteford, Hart, Carmody & Wilson,

815 Fifteenth Street NW., Washington 5, D.C.

R. L. WAGNER,

W. H. MCCOLLOUGH,

Bryant Building, Kansas City 42, Mo.

DAVID T. SEARLS,

Vinson, Elkins, Weems & Searls,

11th Floor Esperson Building, Houston 2, Tex.

Attorneys for Great Lakes Pipe Line Company.

SHELL PIPE LINE CORPORATION,

By Harold F. Baker,

HAROLD F. BAKER,

1300 Connecticut Avenue, Washington 6, D.C.

George S. Wolbert, Jr.,

GEORGE S. WOLBERT, JR.,

WILLIAM F. KENNEY,

50 West 50th Street, New York 20, N.Y.

Attorneys for Shell Pipe Line Corporation.

SINCLAIR PIPE LINE COMPANY,

(Successor to Defendant Sinclair Refining Company),

By Charles I. Thompson,

CHARLES I. THOMPSON,

1035 Land Title Building, Philadelphia 10, Pa.

BYNUM E. HINTON, Jr.,

1210 Shoreham Building, Washington 5, D.C.

Attorneys for Sinclair Pipe Line Company

(Successor to Defendant Sinclair Refining Company).

137 THE TEXAS PIPE LINE COMPANY,
By John J. Wilson,
JOHN J. WILSON,
815 15th Street NW., Washington 5, D.C.
Edward H. Schlaudt,
EDWARD H. SCHLAUDT,
O. J. DORWIN,
135 East 42d Street, New York, N.Y.
Attorneys for The Texas Pipe Line Company.

TEXACO-CITIES SERVICE PIPE LINE COMPANY,
By John J. Wilson,
JOHN J. WILSON,
815 15th Street NW., Washington 5, D.C.
Edward H. Schlaudt,
EDWARD H. SCHLAUDT,
O. J. DORWIN,
135 East 42d Street, New York, N.Y.
Attorneys for Texaco-Cities Service Pipe Line Company.

TEXAS-NEW MEXICO PIPE LINE COMPANY,
By John J. Wilson,
JOHN J. WILSON,
815 15th Street NW., Washington 5, D.C.
Edward H. Schlaudt,
EDWARD H. SCHLAUDT,
O. J. DORWIN,
135 East 42d Street, New York, N.Y.
Attorneys for Texas-New Mexico Pipe Line Company.

CONTINENTAL PIPE LINE COMPANY,
By John E. F. Wood,
JOHN E. F. WOOD,
Barr Building, Washington 6, D.C.
HAROLD S. SKINNER,
P.O. Box 2197, Houston 1, Tex.
Attorneys for Continental Pipe Line Company.

139 In the United States District Court for the
District of Columbia

[File endorsement omitted.]

[Title omitted.]

*Answer and Statement of Defendant Magnolia Pipe Line
Company*

Filed February 12, 1958

Now comes Magnolia Pipe Line Company, a defendant in the above entitled and numbered cause, and files this, its attached statement of additive points of variance on the factual situation disclosed in the motion of United States of America and in the response of defendant Arapahoe Pipe Line Company, as part of its answer herein, and would respectfully show:

1. During the years 1954 through 1956 it paid millions of dollars in dividends to its shipper-owner, as permitted under the Consent Decree, with no deduction attributable to debt outstanding to third parties the proceeds of which was invested in common carrier property. That the valuation of the property of Magnolia Pipe Line Company owned and used for common carrier purposes as made by the Interstate Commerce Commission as of December 31, 1953 used for the basis of computing and paying dividends in 1954 was \$103,977,600; that, as shown by the valuation so made by the Interstate Commerce Commission, there was a total outstanding debt of \$28,700,000. That the valuation of the property of Magnolia Pipe Line Company owned and used for common carrier purposes as made by the Interstate Commerce Commission as of December 31, 1954 used for the basis of computing and paying dividends in 1955 was \$116,236,200; that, as shown by the valuation so made by the Interstate Commerce Commission, there was a total outstanding debt of \$40,000,000. That the valuation of the property of Magnolia Pipe Line Company owned and used for common carrier purposes as made by the Interstate Commerce Commission as of December 31, 1955 used for the basis of computing and paying dividends in 1956 was \$125,563,100; that, as shown by the valuation so made by the Interstate Commerce Commission, there was a total outstanding debt of \$50,000,000. Thus Magnolia Pipe Line Company, during the years involved in the

motion, has actually paid dividends to its shipper-owner as permitted by the Consent Decree on its valuation as made by the Interstate Commerce Commission without deducting outstanding indebtedness; further, such indebtedness represents only a small percentage of the total valuation, while, as shown by the motion, Arapahoe, although computing dividends in the same way, actually made only very small payments of dividends thereon, and, being a newly organized company, its outstanding indebtedness represented a large percentage of its total valuation.

2. Magnolia Pipe Line Company would further show that on February 9, 1955, March 7, 1956, and February 25, 1957, the Interstate Commerce Commission gave notice, as required by Section 19a(h) of the Interstate Commerce Act, 141 by sending copies to the Attorney General, of its tentative valuation of Magnolia Pipe Line Company's property as of December 31, 1953, 1954, and 1955, respectively. No protest was filed within the thirty days prescribed by the Act by the Attorney General or any other interested party, and the said tentative valuation became final as of the date thereof.

3. Magnolia Pipe Line Company alleges that it was one of the original defendants to the Consent Decree; that it and all other parties to said decree understood and construed the judgment at the time of its entry to unambiguously permit it to compute and pay dividends to its shipper-owner at 7% of its common carrier property owned and used for common carrier purposes as made by the Interstate Commerce Commission, with no deduction attributable to debt, and have so understood and construed the judgment ever since. Further, Magnolia would not have consented to the entry of the Consent Decree if such a construction or interpretation had been asserted at the time of the entry of the decree.

Under the terms of the Consent Decree, net earnings in excess of 7% would no longer be unrestricted earned surplus available for investment in common carrier properties on which a dividend might be paid, but were required to be transferred to the surplus account in such a form as to be readily identifiable. The United States and Magnolia, together with the other defendants, agreed that 7% of the valuation of the common carrier's property owned and used for common carrier

purposes as made by the Interstate Commerce Commission represented a reasonable return to the stockholder
 142 shipper-owners, and was permitted to be paid insofar as the Interstate Commerce and Eikins Acts were concerned.

Under such circumstances, the only permissible means available for expansion of Magnolia's common carrier facilities would be borrowed funds or increase of capital stock, inasmuch as depreciation money would have to be reinvested in carrier property to maintain the valuation at the level existing at the time of the Consent Decree, excluding from consideration the fluctuation of reproduction costs. If such means of expansion had been prevented under the Consent Decree as entered, Magnolia Pipe Line Company would not have consented thereto.

4: Magnolia Pipe Line Company would further show that on August 3, 1942 an order was entered in this cause approving a plan of the Great Lakes Pipe Line Company. The Court, with the consent of the Attorney General, approved an interpretation of the word "share" in that a synonymous term, "shipper-owner's proportion", is defined as: "The term 'shipper-owners' proportion' as used above shall mean the proportion which the shares of stock of your petitioner owned by shipper-owners (as defined in Paragraph II of said final judgment) shall bear to all shares of stock of your petitioner outstanding at the time in question, and as applied to a period in which a change in shipper ownership occurs shall be determined on a daily average basis." The approval of this definition was made in behalf of the Attorney General by Thurmond Arnold, Assistant Attorney General, who signed the Consent Decree in behalf of the United States. Thus
 143 the language used clearly defines the meaning of "shipper-owner's share" as used in the Consent Decree. Thus we have a judicial construction of the term "share" as used in the Consent Decree, acquiesced in and agreed to by the attorney representing the United States at the time of the entry of the Consent Decree.

The officers and directors of Magnolia Pipe Line Company have at all times been familiar with the facts stated above and with said order of the Court, and relied upon this construction in its computation and payment of dividends and in making reports to the Attorney General.

5. Magnolia denies that it is required under the Consent Decree to make any deduction before computing and paying its shipper-owner dividend of any sum representing a purported share of the valuation of the company's carrier property financed by or attributable to the loans from third parties invested in carrier property during the years involved in the motion.

WHEREFORE, Magnolia Pipe Line Company prays that a decree be entered that it has properly computed and paid dividends to its shipper-owner at 7% of the valuation of its common carrier property owned and used for common carrier purposes as made by the Interstate Commerce Commission without deducting therefrom any monies paid to third parties and invested in such common carrier property during all the years in question under the motion, and, further, that

144 the Court dismiss plaintiff's motion.

Respectfully submitted.

CHARLES B. WALLACE,

FRANK C. BOLTON, Jr.,

Ross Madole,

ROSS MADOLE,

P.O. Box 900, Dallas, Texas,

Tel. Riverside 2-4131, Station 605,

John E. McClure,

JOHN E. MCCLURE,

626 Washington Building, Washington 5, D.C.,

Tel. Executive 3-2929,

Attorneys for Defendant,

Magnolia Pipe Line Company.

145 [Duly sworn to by Ross Madole; jurat omitted in printing.]

146 In the United States District Court for the District of Columbia

[File endorsement omitted.]

[Title omitted.]

Statement of Plantation Pipe Line Company in opposition to plaintiff's motion directed against Arapahoe Pipe Line Company

Filed February 12, 1958

Plantation Pipe Line Company, a Delaware corporation (hereafter referred to as "Plantation"), shows that it is a defendant common carrier in this cause and, opposing the motion of the plaintiff against Arapahoe Pipe Line Company, files this additional statement, in support of its opposition to the relief there sought by the plaintiff:

1. Plantation was incorporated July 8, 1940. On the date of entry of the final judgment herein, December 23, 1941, its outstanding capital stock, in the amount of \$10 million, was owned by Standard Oil Company (New Jersey), Standard Oil Company (Kentucky), and Shell Union Oil Corporation (now Shell Oil Company), the share of ownership of each then being respectively 50.4%, 26.3% and 23.3%. The present capital stock of Plantation, in the amount of \$12.75 million, is owned by Standard Oil Company (New Jersey), Standard Oil Company (Kentucky) and Shell Oil Company; the present share of ownership of each being respectively 48.83%, 27.13% and 24.04%.

2. On the date of entry of the final judgment herein, and prior thereto, Plantation had outstanding \$10 million of long-term debt owed to The Mutual Life Insurance Company of New York and The Mutual Benefit Life Insurance Company.

3. Prior to, and at the time of drafting, the consent judgment herein the Attorney General had knowledge of outstanding debt by some or all of the ten multiple ownership defendant common carriers named in paragraph 1 of the complaint filed herein.

4. Plantation is a common carrier pipeline subject to the jurisdiction of the Interstate Commerce Commission and transports through its pipeline petroleum products for many different oil company marketers; currently transporting products for 16 such shippers, 13 of whom are not affiliated with any of Plantation's stockholders. More than fifty percent (50%) of the capacity of its line is currently being utilized by non-owner shippers.

5. For each year since Plantation began operations in January, 1942 the Company has filed with I.C.C. annual reports

on Form P which show on their faces the existence of debt owed to third parties. The files of I.C.C. in this respect are available to the Department of Justice, the examination of such files is a duty of the Department of Justice in its enforcement of the final judgment herein, and correspondence with this defendant shows the Department has had knowledge of such debt either through such reports or otherwise.

6. For each of the years 1942 through 1947 Plantation, computing its valuation pursuant to paragraph III(b) of the final judgment herein, computed the value of its property owned and used for common carrier purposes without deduction from valuation for any amount "that is the result of or 148 \ attributable to moneys obtained by the carrier from third parties." Correspondence with the Attorney General shows that he had actual knowledge as early as 1943 that Plantation had outstanding debt prior to the final judgment herein and that it computed its valuation, on which earnings not to exceed seven percent (7%) are permitted to be paid to its stockholders, without deducting such outstanding third party debt. Copies of such letters are attached hereto as Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.

7. For each year since 1947 I.C.C. has sent formal notice to the Attorney General of its tentative valuation of Plantation's property owned and used for common carrier purposes, as required by Section 19a(h) of the Interstate Commerce Act; and such valuation always included the full value of Plantation's property owned and used for common carrier purposes (without deduction for any amount that "is the result of or attributable to moneys obtained by the carrier from third parties"). Without objection by the Attorney General, each such tentative valuation was thereafter confirmed and promulgated by I.C.C. as the Final Valuation.

8. For each year since 1947, the Interstate Commerce Commission, pursuant to Section 19(a) of the Interstate Commerce Act, and as contemplated by paragraph III(a) of the final judgment herein, has established and promulgated a valuation of the property of Plantation owned and used for common carrier purposes (Valuation Docket No. 1343); and each such I.C.C. Final Valuation Report, including that for the year 1947, has shown a valuation for Plantation's said property without deduction for funded debt, which the said reports expressly acknowledge to exist.

149

9. Pursuant to paragraph VIII of the final judgment herein, Plantation has filed annual reports with the Attorney General showing valuations used as earnings basis and earnings available for distribution to Plantation's owners or stockholders. In each such report, Plantation used as the valuation base, on which each Plantation shipper-owner-stockholder is permitted to receive not more than its share of seven percent (7%), the value of Plantation's property as determined annually by I.C.C. since 1948 (and prior thereto Plantation's own determination of valuation pursuant to paragraph III(b) of the final judgment), without any deduction for any amount "that is the result of or attributable to moneys obtained by the carrier from third parties." The existence of such outstanding debt, including the \$10 million debt outstanding at the time of the entry of final judgment herein, has at all times been made known to the Attorney General. The Attorney General has accepted without challenge Plantation's annual reports showing earnings available to owners or stockholders based on the valuations of Plantation's property without deduction for any amount "that is the result of or attributable to moneys obtained by the carrier from third parties."

10. By June 30, 1950 Plantation had paid off its outstanding debt and it then owned a profitable, going common carrier pipeline with a number of established shipper customers. The assets of Plantation, as shown by its June 30, 1950 balance sheet, in excess of all its liabilities, were then more than \$21 million (including \$12.75 million of capital stock).

11. In September 1950, Plantation borrowed \$40 million from the public by a 20 year debenture issue. Between 1951 and 1952 Plantation borrowed an additional \$12 million from a group of 13 banks. In 1956 it borrowed \$25 million from the public by a 30 year debenture issue. The proceeds of each of those loans were utilized by Plantation to expand its common carrier facilities. Each of those borrowings was secured by the total assets of the corporation, including the equitable interests and property rights of its shipper-owner-stockholders in and to its assets.

12. Plantation incurred the foregoing debt, aggregating \$77 million, and its stockholders permitted it to incur such debt, in reliance upon the construction of the final judgment herein which it had theretofore employed in its annual reports to the Attorney General, each and all of which has been accepted by him without challenge.

[COPY]

PLANTATION PIPE LINE COMPANY,

REPORT TO THE ATTORNEY GENERAL OF THE UNITED STATES FOR THE YEAR 1948, AS REQUIRED BY PARAGRAPH VIII OF THE FINAL JUDGMENT ENTERED IN THE CASE OF CIVIL ACTION NO. 14060 IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA ENTITLED UNITED STATES OF AMERICA, PLAINTIFF

VS.

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

1. Valuation Used as Earnings Basis		\$23,057,975
2. Earnings:		
(a) Derived from Transportation and Other Common Carrier Services	\$2,548,474	
(b) Derived from Sources Other Than Transportation and Other Common Carrier Services	37,934	
(c) Derived from Investment of Excess Earnings in U.S. Gov't Securities	None	
(d) Total Earnings		2,586,408
3. Total Earnings Available for Distribution to Owners or Stockholders:		
(a) From Transportation and Other Common Carrier Services:		
7% of Valuation Shown Above	\$1,614,058	
Allowable Deficiency Carried Forward from 1947	None	
(b) From Other Than Transportation and Other Common Carrier Services		37,934
(c) Total Earnings Available for Distribution		1,651,992
4. Earnings Transferred To and Retained in Surplus Pursuant to Paragraph V of the Final Judgment		934,416
5. Earnings Credited, Paid, Granted or Given to Owner		2,550,000

PLANTATION PIPE LINE COMPANY,
S. V. KANE, Treasurer.

Dated April 12, 1949.

156

Exhibit 5 to statement

Address Reply to "The Attorney General" and refer to Initials and Number ESM 59-8-213.

[COPY]

DEPARTMENT OF JUSTICE,
Washington 25, D.C., June 23, 1944.

MR. S. V. KANE,
*Treasurer, Plantation Pipe Line Company, Post Office Box
1743, Atlanta 1, Georgia.*

DEAR SIR: With reference to your letters of April 14, 1943 and April 12, 1944, transmitting to this Department the reports of your company for 1942 and 1943, as required by Paragraph VIII of the final judgment in the case of United States v. The Atlantic Refining Company, et al., please be advised that we do not feel that you disclose information as required by the judgment. For both years we wish to be advised of the total earnings of the carrier. Item 2 of your reports merely sets forth the figure representing 7% of valuation.

In Item 4 of the reports you have not disclosed whether the moneys transferred to the special surplus account were retained or paid out. As to the 1942 report your letter of May 14, 1943, revealed that excess earnings were used to retire debt outstanding. Were surplus earnings in 1943 similarly used and in what amount and to whom paid? We suggest that the filing of revised reports would be advisable.

Very truly yours,

(Signed) Wendell Berge,
WENDELL BERGE,
Assistant Attorney General.

157

Exhibit 6 to statement

JULY 17, 1944.

UNITED STATES VS. ATLANTIC REFINING COMPANY, ET AL.

MR. WENDELL BERGE,
*Assistant Attorney General, Department of Justice, Washing-
ton 25, D.C.*

DEAR SIR: This is in reply to your letter of June 23, 1944, wherein you requested this defendant in the above captioned litigation to submit information in addition to that reported

in 1942 and 1943 in accordance with Paragraph VIII of the final judgment.

In the first paragraph of your letter, you asked that we advise you as to the amount of the total earnings of this carrier for the years 1942 and 1943, which are \$2,531,528 and \$2,305,040, respectively. As you will observe, these earnings figures represent the sum of Items 2 and 4 on each of the reports submitted by this carrier for the calendar years 1942 and 1943.

In the last paragraph of your letter, you asked if the excess earnings transferred to the Special Surplus Account in 1943 were used in retiring a debt, as was done in 1942, and if so in what amount and to whom paid. This is to advise that the amount (\$674,644) reported for 1943 opposite Item 4, reading "amount of money transferred to or withdrawn from the surplus retained pursuant to Paragraph V of the final judgment" was used to retire a debt incurred prior to December 23, 1941. This debt is in the form of Serial Notes held by The Mutual Benefit Life Insurance Company, Newark, New Jersey, and The Mutual Life Insurance Company of New York. This debt was originally incurred for the purpose of, and the proceeds thereof expended in, constructing and acquiring common carrier property.

We trust that the above information satisfactorily complies with your request.

Yours very truly,

PLANTATION PIPE LINE COMPANY,
C. R. YOUNTS, *President*.
By S. V. KANE, *Treasurer*.

SVK: gw.

158

Exhibit 7 to statement

STANDARD OIL COMPANY,
30 Rockefeller Plaza,
New York 20, N.Y.; June 11, 1951.

HONORABLE H. GRAHAM MORRISON,
Assistant Attorney General, Department of Justice, Washington, D.C.

DEAR SIR: This Company is one of the defendants in "United States of America vs. The Atlantic Refining Company et al" (Civil Action No. 14060 in the District Court of the

United States for the District of Columbia.) The Consent Decree in that action provides in part:

"No defendant common carrier shall * * * pay * * * to any shipper-owner * * * any sums of money * * * derived from transportation * * * which * * * is in excess of seven percentum * * * of the valuation of such common carrier's property * * *"

"Valuation as hereinabove used shall mean the latest final valuation of each common carrier's property * * * as made by the Interstate Commerce Commission."

On July 8, 1948 Interstate Commerce Commission issued its Valuation Order No. 28 pursuant to which valuations as of December 31, 1947 of all common carrier pipe lines engaged in interstate commerce have been (or shortly will be) completed.

This Company and each common carrier pipe line with respect to which this Company has the status of a "shipper-owner" (as that term is defined in the Consent Decree) have concluded that:

1. The valuation fixed for each common carrier pipe line at the conclusion of the proceedings under Valuation Order No. 28 is "the latest final valuation" of such carrier for all purposes of the Consent Decree.

2. The Consent Decree requires that such "latest final valuation" be used by each common carrier pipe line as its base valuation for 1948 and all subsequent years until the Interstate Commerce Commission makes a new valuation of such common carrier pipe line.

3. For years subsequent to 1948 and until the Interstate Commerce Commission issues a new valuation of such common carrier pipe line the 1948 base valuation must be adjusted in accordance with the provisions of paragraph III of the Consent Decree.

159 4. Dividends paid in respect of 1948 and subsequent years in amounts not in excess of 7% of the valuation of the common carrier pipe line determined in accordance with the foregoing principles would be proper under the Consent Decree.

This Company would appreciate confirmation from the Department that the foregoing construction of the Consent Decree is in accord with the Department's views.

Respectfully,

(S) GEORGE KOEGLER.

GK:RR.

ma.

160

Exhibit 8 to statement

[COPY]

(Justice Department Letterhead)

July 5, 1951.

GEORGE KOEGLER, Esq.

*Standard Oil Company (New Jersey), 30 Rockefeller Plaza,
New York 20, N. Y.*

DEAR MR. KOEGLER: This is in reply to your letter of June 11, 1951 regarding the Final Judgment entered in the case of United States v. The Atlantic Refining Company, et al. (Civil Action No. 14060).

You state that the Interstate Commerce Commission is engaged in the revaluation, as of December 31, 1947, of the common carrier pipelines with respect to which your company has a status of a "shipper-owner" as the term is defined in Paragraph II of the Final Judgment. You request that we advise you as to the effect of such revaluations upon the application of Paragraph III(a) of the Judgment.

In giving you our views on the points raised by your letter of June 11, 1951, it is, of course, understood that we are not expressing ourselves on any collateral issue.

We construe "latest final valuation" in the first sentence of Paragraph III(a) to mean the latest final valuation of the Interstate Commerce Commission as of the beginning of any calendar year in question, and not the latest final valuation as of the date the Judgment was entered. Accordingly, it is permissible, in our view, to use the December 31, 1947 final valuations of the Interstate Commerce Commission for the calendar year 1948 and subsequent years in lieu of any previous final valuation in force at the time the Judgment was entered, until such time as the Commission issues a new valuation.

The second sentence of Paragraph III(a) prescribes a specific procedure for bringing a "latest final valuation" down to

date. Under the language of that sentence, it is our view that the final valuation made by the Interstate Commerce Commission remains constant for the purposes of the Judgment until the Commission makes a new final valuation. To that valuation is to be added the value of additions and betterments, valued for the year in which completed, less appropriate deductions for physical depreciation and retirements, determined in accordance with the methods used by the Commission in bringing valuations down to date. It is our understanding that in doing this the Commission uses period prices rather than original cost.

We would appreciate your furnishing to us the names of each of the common carrier pipelines to which your company as "shipper-owner" intends to apply the above interpretations and your informing us whether you are communicating such interpretations to the officials of such pipeline companies.

Sincerely yours,

(S) Newell A. Clapp,
NEWELL A. CLAPP,
Acting Assistant Attorney General.

ma.

161

Exhibit 9 to statement
[COPY]

STANDARD OIL COMPANY,
30 Rockefeller Plaza,
New York 20, N.Y., July 9, 1951.

Re: NACST 59-8-213.

Mr. NEWELL A. CLAPP:

Acting Assistant Attorney General, Department of Justice,
Washington, D.C.

DEAR MR. CLAPP: Thank you for your letter of July 5, 1951 replying to mine of June 11, 1951 regarding the interpretation of certain parts of the Consent Decree in "United States v. The Atlantic Refining Company, et al." (Civil Action No. 14060 in the District Court of the United States for the District of Columbia).

In reply to the questions raised in the last paragraph of your mentioned letter, I would advise:

(1) The common carrier pipe lines from which this Company might receive dividends are:

Interstate Oil Pipe Line Company
Plantation Pipe Line Company

Unless you have some objections, we propose to send copies of our correspondence to those companies and to notify them that we will not accept dividends from them in amounts greater than those calculated in accordance with the interpretation set forth in our correspondence.

(2) In addition, subsidiaries of this Company might receive dividends from the following common carrier pipe lines:

Ajax Pipe Line Corporation
Humble Pipe Line Company
Portland Pipe Line Corporation
Transit and Storage Company
Tuscarora Oil Company, Ltd.

Unless you have some objection, we also propose to send copies of our correspondence to the stockholding subsidiaries for their guidance.

Sincerely,

(S) GEORGE KOEGLER.

GK:RR.
ma.

162

Exhibit 10 to statement

[COPY]

(Justice Department Letterhead)

JULY 13, 1951.

GEORGE KOEGLER, ESQ.,

Counsel, Standard Oil Company (New Jersey), 30 Rockefeller Plaza, New York 20, New York.

DEAR MR. KOEGLER: I have your letter of July 9, 1951, acknowledging my letter of July 5, 1951 and furnishing the names of the pipeline companies involved in the interpretation of certain provisions of the Consent Judgment entered in the case of United States v. The Atlantic Refining Company, et al., Civil Action No. 14060.

We note that you purpose to send copies of our exchange of correspondence to Interstate Oil Pipe Line Company and Plantation Pipe Line Company and to the subsidiaries of your

company which might receive dividends from Ajax Pipe Line Corporation, Humble Pipe Line Company, Portland Pipe Line Corporation, Transit and Storage Company, and Tuscarora Oil Company Ltd., unless we have some objection to such reference. We have no objection to your proposal and we urge that you instruct your subsidiary oil companies to likewise advise the five pipe line companies included in your second group.

Sincerely yours,

(S) Newell A. Clapp,
NEWELL A. CLAPP,
Acting Assistant Attorney General.

ma.

163

In the United States District Court
for the District of Columbia

[File endorsement omitted.]

[Title omitted.]

*Statement of the defendant, Great Lakes Pipe Line Company,
pursuant to the stipulation of January 30, 1958*

Filed February 12, 1958

Now comes the defendant, Great Lakes Pipe Line Company, pursuant to the stipulation approved by the Court herein on January 30, 1958, and files this statement of additive points of variance from the factual situation disclosed in the motion of the plaintiff, United States of America, and in the response of the defendant, Arapahoe Pipe Line Company, and respectfully says:

I

This defendant, Great Lakes Pipe Line Company, is a corporation duly incorporated under the laws of the State of Delaware. It has been continuously engaged since 1931 in the transportation of petroleum products by means of an extensive pipe line system which now extends from Oklahoma to the Chicago area, Minneapolis, Fargo, Des Moines, Kansas City and other points in the midwestern area of the United States. Defendant was an original party to this cause when the same was instituted and at the time of the entry of the

final judgment herein on December 23, 1941. On such date and for some time prior thereto the outstanding capital stock of this Company was owned by the eight shipper-owners as named in said final judgment and such concerns, or their successors, subsidiaries or affiliates, have continued to be shipper-owners of this defendant up to the present time.

164

II

From the time of the commencement of the operation of its pipe line system in 1931 and during each year to the present date, this defendant has been indebted to third parties for monies which were borrowed in connection with the construction, expansion and operation of such pipe-line system. From and including December 31, 1942 to and including December 31, 1957, the average of the annual debt as at December 31 of each year of defendant to third parties has been \$48,256,538, which represents an average of 69.97% of its total capital. On December 31, 1957, this indebtedness amounted to \$85,313,000. This defendant at all times has followed the plain language of said final judgment and has never deducted from the valuation of its carrier property, before computing its shipper-owners' permissible dividend, the amount of the valuation of such property financed by loans from third parties. The contention of plaintiff, United States of America, in the motion filed against Arapahoe Pipe Line Company, that the amount of the valuation of the carrier property financed by loans from third parties should be deducted from the valuation before computing the 7% permissible dividend would result in this defendant's having paid during the past 16 years many millions of dollars in excess of the amount permitted under such a theory.

III

This defendant, as required by paragraph VIII of said final judgment, has duly rendered annual reports to the Attorney General of the United States showing "Valuation used as earnings base," the earnings for the preceding year, the amount "available for distribution to stockholders" and other financial facts. In addition, defendant has complied with the law and filed annual reports under oath with the Interstate Commerce Commission on a form provided by such Commission known as the Form P report and has made full disclosure in such an-

nual reports of the character and amount of all loans. The Attorney General following the first report subsequent to the final judgment and the supplemental orders entered therein had full and complete knowledge in detail of the foregoing and of the fact that this defendant had outstanding debt to third parties, all of which is evidenced by an exchange of correspondence between this defendant and the Attorney General, comprising four letters, copies of which are attached hereto and incorporated herein. The Attorney General has never advised this defendant that it should not include in the valuation of its carrier property the amount thereof financed by loans, and that, before computing its shipper-owners' permissible dividend, it should deduct from the valuation of its common carrier property that part of the valuation financed by or attributable to loans from third parties. Defendant has borrowed money for the purpose of financing the construction and expansion of its pipe line system and has computed the amount of the permissible dividends to its shipper-owners in reliance upon the plain language of Paragraph III of said final judgment and the construction placed thereon by the Attorney General and his acquiescence in the action taken by this defendant, and by reason thereof plaintiff is estopped to assert and make the contentions as averred in the motion filed herein against Arapahoe Pipe Line Company.

IV

(a) The Interstate Commerce Commission entered its order in Docket No. 28106, Petroleum Rail Shippers' Association vs. Elton & Southern Railroad, et al., 243 ICC 589, determining the valuation of the property of this defendant at December 31, 1939 to be \$17,700,000. Said valuation was the latest final valuation of the Commission which preceded entry of the judgment and filing of the Petition in this cause by this defendant on August 3, 1942. As at December 31, 1939 this defendant had indebtedness to third parties which had been used to acquire properties included within such valuation.

(b) On August 3, 1942, defendant, Great Lakes Pipe Line Company, filed a Petition in this cause praying that the Court enter an order declaring that a plan fully described therein for incurring outside debt totaling \$12,000,000 and distributing the proceeds thereof among its defendant shipper-owners in reduction of capital, was not in violation

of the terms of the judgment. On the same day, this Court, acting through Justice Bolitha J. Laws, entered the order prayed for upon the consent of the Attorney General.

(c) The plan, as set forth in the Great Lakes' petition and approved by the Court, is wholly inconsistent with the allegations of the plaintiff's motion that the final judgment of December 23, 1941, is violated by a failure to deduct an amount attributable to debt from valuation before computing permissible dividends, since the order of August 3, 1942 did not require the defendant to deduct an amount from valuation attributable to the outstanding debt at that time before computing permissible dividends but to the contrary the order of August 3, 1942 specified that the valuation as of December 31, 1939 should be brought down to date using certain specified deductions not including a deduction attributable to debt.

(d) The Court, and the Attorney General by necessary implication approved as the valuation to be used as an earnings basis the valuation as of December 31, 1939 made by the Interstate Commerce Commission, and not such valuation less an amount attributable to debt. In each and every annual report rendered to the Attorney General following the entry by this Court of its order of August 3, 1942, this defendant has computed its valuation used as an earnings basis from the latest final valuation made by the Interstate Commerce Commission, and not such valuation minus an amount attributable to debt.

(e) The issue raised by the Department of Justice in its motion has already been determined as to this defendant and its shipper-owners. Said order is accordingly *res judicata* as to said issue.

Wherefore, this defendant prays that the motion of the plaintiff, United States of America, against the defendant, Arapahoe Pipe Line Company, be in all things denied and that the Court thereby determine that there is not a violation of said final judgment entered herein on December 23, 1941, in failing to deduct from the valuation of the common carrier property before computing the shipper-owners'

permissible dividend, the portion of the valuation financed by or attributable to loans from third parties.

R. L. WAGNER,
W. H. MCCOLLUGH,

*Bryant Building,
Kansas City 42, Missouri.*

DAVID T. SEARLS,

VINSON, ELKINS, WEEMS & SEARLS,

*11th Floor Esperson Building,
Houston 2, Texas.*

By John J. Wilson,

WHITEFORD, HART, CARMODY & WILSON,

*815 Fifteenth Street Northwest,
Washington 5, D.C.*

By John J. Wilson,

JOHN J. WILSON.

[Duly sworn to by R. A. Kroenert; jurat omitted in printing.]

168

Attachment No. 1 to statement

DEPARTMENT OF JUSTICE

WASHINGTON, D.C.

MAY 29, 1943.

Mr. R. A. KROENERT,

*Secretary and Treasurer, Great Lakes Pipe Line Company,
P.O. Drawer 2239, Kansas City, Missouri.*

DEAR SIR: Reference is made to your letter of April 8, 1943, transmitting the report of your company for the year 1942, as required under the final judgment in the pipeline case. In connection with the auditing of the various reports filed under the pipeline judgment, we desire that you supply the information requested in the following paragraphs.

With reference to valuation used as an earnings base, please submit information as to how you arrived at the figure \$15,544,730.87, giving us the benefit of the calculations used, especially with reference to the amount of depreciation, the amount of retirements, the amount of additions and betterments, and the particular valuation of the I.C.C. which was used as the initial base for the computations required by the decree.

In view of the statements contained in the petition filed by Great Lakes on August 3, 1942, it is desired that you

advise as to (a) the date on which reclassification and revaluation of capital stock took effect; (b) the number of capital shares authorized and issued (separately) immediately after reclassification and as of the last day of the calendar year 1942; (c) the names of the owners of all classes of capital stock of your company and the number of shares held by each as of December 31, 1942; (d) the names and addresses of the owners of debentures issued during 1942, both as to registered debentures without coupons and debentures with coupons, the date on which issued, the amount owned by each owner, and the dates on which any changes in ownership occurred; and (e) the names and addresses of the beneficial owners, if known from any source whatsoever, of any debentures issued by your company.

Please advise whether during 1942 any sums were paid to the sinking fund agent under the provisions of the indenture executed in connection with the issuance and sale of the debentures, and if so, in what amounts.

Please advise whether at any time during 1942 your company had any outstanding indebtedness to any of the stockholders of your company, or the subsidiary affiliates of such stockholders on which any principal or interest was paid during 1942. If so, please advise as to the amount and nature of the indebtedness and to whom principal or interest was paid during 1942 and in what amounts.

With reference to the item of \$2,294,965.64 reported as total earnings, please advise whether before arriving at this earnings figure any sums of money were deducted from the gross revenues of your company for payment to any stockholders or shipper-owners and charged as interest, rent or payments for services. If so, please give the detailed amounts and nature of each payment.

We note from Statement No. 4256 of the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission that your company had as of December 31, 1941 unmatured funded debt outstanding in the amount of \$400,000. Please advise as to the name of the holder or holders of the evidences of indebtedness represented by this debt and as to whether during 1942 any principal or interest was paid on

UNITED STATES VS. ATLANTIC REFINING CO. ET AL. 131

this debt, to whom paid, the date on which paid and the amount of such payments.

Very truly yours,

Tom C. Clark,
TOM C. CLARK,
Assistant Attorney General.

170

Attachment No. 2 to statement

JUNE 24, 1943.

File: JHL-59-8-213

The ATTORNEY GENERAL,
Department of Justice, Washington, D.C.

DEAR SIR: In accordance with your letter of May 29, 1943, we are setting forth herein the information requested in the same order as the inquiries appear in your letter:

Valuation used as an earnings base

Intersate Commerce Commission Valuation 12-31-39,			
Docket No. 28106.....			\$17,700,000.00
1940	Property additions.....	\$126,229.91	
1940	Property retirements.....	67,175.05	
		\$59,054.86	
1940	Material and supplies.....	13,002.22	
1940	Depreciation expense.....	1,149,954.32	
			1,077,897.24
Valuation 12-31-40.....			16,622,102.76
1941	Property additions.....	\$419,553.96	
1941	Property retirements.....	399,095.62	
		\$20,458.34	
1941	Material and supplies.....	46,110.12	
1941	Depreciation expense.....	1,152,940.35	
			1,077,371.89
Valuation 12-31-41.....			15,544,730.87

(a) The reclassification and revaluation of capital stock was ratified by the stockholders on September 3, 1942.

(b) Number of shares of common stock authorized and issued after reclassification and on the last day of the calendar year 1942:

132 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

171 Authorized—600,000 shares of the par value of \$6 each.

Issued—411,669 shares of the par value of \$6 each.

(c) Stockholders as of December 31, 1942:

Name	Number of Shares
Continental Oil Company	120,105
Mid-Continent Petroleum Corporation	78,048
Skelly Oil Company	58,524
The Texas Company	49,965
The Pure Oil Company	39,045
Sinclair Refining Company	24,192
Cities Service Oil Company	21,219
Phillips Petroleum Company	20,541

Total 411,669

(d) Registered debenture holders:

Name and address	Date issued	Principal amount issued 1942	Principal amount balance 12-31-42
Metropolitan Life Insurance Company, 1 Madison Avenue, New York City	9-4-42	\$5,000,000	\$5,800,000
The Mutual Life Insurance Company of New York, 34 Nassau Street, New York City	9-4-42	2,000,000	1,933,000
The Penn Mutual Life Insurance Company, Independence Square, Philadelphia, Pa.	9-4-42	2,000,000	1,933,000
Provident-Mutual Life Insurance Company of Philadelphia, 4601 Market Street, Philadelphia, Pa.	9-4-42	1,000,000	967,000
Reliance Life Insurance Company of Pittsburgh, Fifth Avenue and Wood Street, Pittsburgh, Pa.	9-4-42	750,000	725,000
171a The Union Savings Bank of Pittsburgh, Fifth Avenue and Grant Street, Pittsburgh, Pa.	9-4-42	250,000	
The Union Trust Company of Pittsburgh, Frick Building Branch, Pittsburgh, Pa.	12-21-42		242,000
		12,000,000	11,600,000

*This debenture was cancelled December 21, 1942, and a new debenture was issued on the same date to The Union Trust Company of Pittsburgh.

During 1942, \$400,000 was paid to the sinking fund agent, which amount was applied to the redemption of the debentures.

(e) Beneficial owners not known.

There were no payments made during 1942 to any stockholders or the subsidiary affiliate of such stockholders for any principal or interest on outstanding indebtedness.

Payments made to stockholders or shipper-owners for rent or services during 1942 and deducted from gross revenue in arriving at a net income of \$2,294,965.64, are as follows:

Continental Oil Company--	Rental of fuel oil tank located on railroad siding.	\$12.00
Continental Oil Company--	Rental of warehouse for record storage (discontinued during 1942).	90.00
Mid-Continent Petroleum Corporation.	Rental of pipe line from refinery to pump station.	255.00
Cities Service Oil Company.	Rental of pipe line from refinery to pump station.	4.00
Phillips Petroleum Company.	Rental of telephone pole line----	87.68
172 Phillips Petroleum Company.	Payments for transporting products from El Dorado, Kansas to Paola and/or Kansas City, Kansas.	303,348.30
Phillips Petroleum Company.	Portion of East St. Louis transportation revenue originating on Great Lakes lines.	231,304.01
Phillips Petroleum Company.	Portion of transportation revenue originating at Borger, Texas (Skelly Oil Company barrelage).	164,416.74

The funded debt of \$400,000 outstanding on December 31, 1941, was owed to the Guaranty Trust Company of New York. There were no principal payments made on this indebtedness during 1942. Interest paid to Guaranty on this debt amounted to \$8,116.68.

Yours very truly,

RAK:GW.

173 Attachment No. 3 to statement

DEPARTMENT OF JUSTICE

WASHINGTON, D.C.

AUGUST 23, 1943.

Mr. R. A. KROENERT,
Secretary and Treasurer, Great Lakes Pipe Line Company,
Post Office Drawer 2239, Kansas City, Missouri.

DEAR SIR: With further reference to your report to the Attorney General as of April 15, 1943 filed pursuant to the provisions of the final judgment entered in the case of United States of America v. The Atlantic Refining Company, et al.,

Civil Action No. 14060, it is desired that you furnish the Department, as promptly as possible, the following information:

(a) The amount and character of any debt or refunded debt owed to a defendant shipper-owner, including its subsidiaries and affiliates, outstanding at the time of the entry of this judgment;

(b) An analysis of the indebtedness reported in paragraph (a) above, giving the date incurred, the purpose for which it was incurred, and the amount or amounts realized from such indebtedness which were expended by your company in constructing or acquiring common carrier property;

(c) A description of the common carrier property acquired or constructed with the funds reported in paragraph (b) above, together with its location and mileage and the accounting year in which such properties were constructed or acquired;

(d) Disposition of the common carrier property reported in paragraph (c) above, in the event such property was not included within the operating common-carried property of

174 your company on the date of the entry of the final judgment. If disposed of, was the property transferred or retired? If transferred, to whom was it transferred and what was the consideration received therefor? If either transferred or retired, in what accounting period were such transfers or retirements made? If retired, in what accounts were realized assets placed, and when?

In reporting the character of the indebtedness as requested in paragraph (a) above, it is desired that full details be given as to whether this indebtedness was negotiable or non-negotiable and was classified as funded, open account, advance, special deposit, promissory note, loan account, unpaid dividends, residual book value, or such other special designations as may have been used. In the event any of the above described indebtedness was acquired by the shipper-owner from original or successor holders of such indebtedness, please advise the date of such acquisition by the shipper-owner and the consideration paid therefor by the shipper-owner.

In the event that during the calendar year 1942 any change whatever occurred with regard to the indebtedness reported in answer to the above questions, please describe any changes in the character of the indebtedness or identity of the holder or holders and state the amounts of payments on the principal and interest, and the accounts to which principal and interest payments were charged.

All of the above information is needed by the Department to properly audit the reports filed with it by your company for the calendar year 1942 and succeeding years pursuant to the provisions of paragraph VIII of the final judgment.

Very truly yours,

Tom C. Clark,

TOM C. CLARK,

Assistant Attorney General.

175.

Attachment No. 4 to statement

AUGUST 30, 1943.

File: JHL-59-8-213

The ATTORNEY GENERAL,
Department of Justice, Washington, D.C.

DEAR SIR: As requested in your letter of August 23, 1943, this is to inform you that Great Lakes Pipe Line Company did not owe to a defendant shipper-owner any debt or refunded debt on December 23, 1941, the time of entry of the judgment in Civil Action No. 14060.

Yours very truly,

RAK:GW.

176 In the United States District Court for the District of
Columbia

[File endorsement omitted.]

Civil Action No. 14,060

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING REFINING COMPANY, ET AL.,
DEFENDANTS

Petition

Filed August 3, 1942

To the Honorable the Justices of the District Court of the
United States for the District of Columbia:

The petition of the defendant Great Lakes Pipe Line Company, by its attorneys, respectfully alleges and shows to the Court:

1. That your petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with its principal office in Bryant Building, Kansas City, Missouri, and is a defendant common carrier as defined in Paragraph II of the final judgment entered in this cause on the 23rd day of December, 1941.

2. That your petitioner has an authorized capital stock of 200,000 shares without par value, of which 137,223 shares are at present issued and outstanding, the capital with respect to said outstanding shares being \$13,722,300. That said outstanding shares are owned by the following defendants in the amounts set opposite their respective names:

177	Name of Owner	Number of shares
	Continental Oil Company	40,035
	Mid-Continent Petroleum Corporation	26,016
	Skelly Oil Company	19,508
	The Texas Company	16,665
	The Pure Oil Company	13,015
	Sinclair Refining Company	8,064
	Citiles Service Oil Company	7,073
	Phillips Petroleum Company	6,847
	Total	137,223

That all of the above named defendants are shipper-owners with respect to your petitioner as defined in Paragraph II of said final judgment.

3. (a) That your petitioner intends to reduce its capital, pursuant to the laws of the State of Delaware, from said sum of \$13,722,300, to \$2,470,014, and to change and reclassify its capital stock so that each of the 137,223 outstanding shares of capital stock without par value and each of the 62,777 shares of capital stock without par value, authorized but not issued, shall be reclassified and changed into 3 shares of Common Stock of the par value of \$6.00 per share, and the total authorized capital stock of your petitioner will consist of 600,000 shares of Common Stock of the par value of \$6.00 per share, of which 411,669 shares will be, and remain outstanding and 188,331 shares will be authorized and unissued; and that your petitioner intends that the amount of such reduction in capital, namely \$11,252,286, shall be credited to capital surplus.

(b) That contemporaneously with such change and reclassification of its capital stock, your petitioner intends to issue its

fifteen year debentures in the aggregate principal amount of \$12,000,000 maturing on the fifteenth day of June, 1957, and bearing interest at the rate of $3\frac{1}{4}\%$ per annum; that the indenture under which said debentures are to be issued will provide for a sinking fund calling for the payment by your
 178 petitioner of \$400,000 in each six months' period, while said debentures are outstanding; to be applied to the retirement of debentures without premium; that the amount of such sinking fund will retire the entire issue of debentures by maturity; and that said indenture will likewise provide that the debentures may be redeemed as a whole or in part prior to maturity at the option of your petitioner at a stated schedule of premiums and that the entire principal amount of debentures outstanding may be declared due and payable upon the happening of certain events of default.

(c) That forthwith upon the issuance and sale of said \$12,000,000 principal amount of debentures, your petitioner intends to apply the proceeds thereof to make a distribution of \$11,252,286 out of capital surplus to its shipper-owner stockholders named above, and to utilize the balance of such proceeds for additional working capital or other corporate purposes.

4. That your petitioner intends to make the sinking fund payments and to pay interest on and the principal (including premium, if any) of the debentures when the same shall become due upon maturity, call for redemption, acceleration or otherwise, from any funds of your petitioner and from whatever source derived. That your petitioner agrees, however,

(a) that the amount of earnings, which under Paragraph III of said final judgment would otherwise be permitted to be distributed in the payment of dividends in any calendar year by your petitioner to its shipper-owners, shall be reduced by an amount equal to the shipper-owners' proportion of any amounts accrued for interest on said debentures in such calendar year; and that if in any calendar year the amount so otherwise distributable by the petitioner to its shipper-owners is less than an amount equal to the shipper-owners' proportion of the interest accrued in such calendar year on said debentures the deficiency will be deducted from the
 179 amount of earnings permitted to be distributed under said Paragraph III in the payment of dividends to shipper-owners in subsequent calendar years before any such dividends shall be paid to shipper-owners; and

(b) that if at any time all payments theretofore made on account of principal of the debentures (including sinking fund and premium, if any) shall exceed the amount of all depreciation charged against earnings since December 31, 1941 (the current annual depreciation charges of your petitioner being approximately \$1,150,000), earnings of the petitioner otherwise permitted to be distributed thereafter to shipper-owners under Paragraph III of said final judgment will be reduced to the extent of an amount equal to the shipper-owners' proportion of the amount of such excess;

(c) that if in any calendar year the earnings of your petitioner shall be insufficient to cover all its operating expenses, determined in accordance with generally accepted principles of accounting, including depreciation, and the interest charges on the debentures, such deficit (but only to an amount no greater than the total of the sinking fund and interest requirements on the debentures for such calendar year), will, to the extent of an amount equal to the shipper-owners' proportion of such deficit, be carried to a special deficit account, and your petitioner will not thereafter distribute dividends to its shipper-owners until such deficit account is eliminated (i) through transfers from any earnings of your petitioner (determined as above but before depreciation or interest charges on the debentures), accruing subsequent to the establishment of said special deficit account, but only to the extent that such deficit account was created by failure to earn an amount equal to the amount of the depreciation equivalent to sinking fund requirements (the amounts so transferred from earnings to be applied toward the elimination of such special deficit account on a first created-first eliminated basis but not toward the elimination of any item in the special deficit account in existence more than three years after the year in which it arose); and (ii) through transfers from earnings otherwise permitted to be distributed to shipper-owners under Paragraph III of said final judgment to the extent that such deficit account was created on account of failure to earn interest or existed on account of not being eliminated by transfers made pursuant to subdivision (i) of this paragraph.

Any addition in any calendar year to the special deficit account to an amount equal to the interest charges on the debentures in that calendar year shall constitute a failure to earn interest; and the balance of any such addition to the

special deficit account in that calendar year, to the extent of the sinking fund requirements for that calendar year, shall constitute a failure to earn depreciation charges;

(d) that for the purposes of such final judgment in bringing down to date the valuation of your petitioner's property owned and used for common carrier purposes

(i) in the case of bringing down to date the valuation as of December 31, 1939 there shall be deducted from such valuation (x) the total amounts deducted for physical depreciation and retirement of common carrier property in the years 1940 and 1941 plus (y) the total amounts charged for depreciation on common carrier property subsequent to December 31, 1941 or the total of all sinking fund payments on the debentures made subsequent to that date, whichever is greater; and

(ii) in the case of bringing down to date the valuations made subsequent to December 31, 1941, there shall be 181 deducted from the latest final valuation made by the Interstate Commerce Commission, (which may be higher or lower than the last preceding valuation brought down to date) in addition to all deductions other than depreciation required to be made by the said final judgment either the total amounts charged for depreciation on common carrier property since such latest final valuation or the total of all sinking fund payments made on the debentures since such latest valuation, whichever amount is greater; and

in all other respects the provisions of the final judgment as to valuation shall govern.

The term "shipper-owners' proportion" as used above shall mean the proportion which the shares of stock of your petitioner owned by shipper-owners (as defined in Paragraph II of said final judgment) shall bear to all shares of stock of your petitioner outstanding at the time in question, and as applied to a period in which a change in shipper ownership occurs shall be determined on a daily average basis.

5. That this petition is filed pursuant to Paragraph X of said final judgment to secure appropriate directions relative to the construction of said final judgment in relation to the proposed plan of your petitioner set forth above.

6. That the relief requested herein does not affect any of the numerous defendants except your petitioner and, in their capacity as shipper-owners of your petitioner but only in respect of the specific plan set forth herein, Continental Oil Com-

pany, Mid-Continent Petroleum Corporation, Skelly Oil Company, The Texas Company, The Pure Oil Company, Sinclair Refining Company, Cities Service Oil Company and Phillips Petroleum Company.

Wherefore, your petitioner prays that an order may be entered in this cause (a) declaring that the plan set forth in this petition is not in violation of the terms of said final judgment entered on the 23rd day of December, 1941, and 182 permitting your petitioner to carry said plan into effect, subject to all of the provisions set forth in this petition, all without prejudice to the rights of any of the parties to this cause in any matter other than the specific plan set forth herein, and (b) granting to your petitioner such other, further and general relief as to the Court in the premises may seem just and proper.

Dated at Washington, D.C., this 3d day of August, 1942.

WILLIAM G. FEELY,

RICHARD S. HOLUNS,

JAMES J. COSGROVE,

Attorneys for Petitioner.

183

In the United States District Court
for the District of Columbia

[File endorsement omitted.]

Civil Action No. 14060

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

District of Columbia ss.:

Affidavit of James J. Cosgrove

Filed August 3, 1942

James J. Cosgrove, being duly sworn, deposes and says that he is a Vice-President of Great Lakes Pipe Line Company, one of the defendants in the above entitled cause, and is one of the attorneys for said defendant therein.

That said Great Lakes Pipe Line Company is filing its petition dated the 3d day of August, 1942, praying for an

order declaring that a certain plan set forth in said petition is not in violation of the terms of the final judgment entered herein on the 23d day of December, 1941, and permitting said petitioner to carry said plan into effect, subject to all the provisions set forth in said petition, all without prejudice to the rights of any of the parties to this cause in any matter other than the specific plans set forth in said petition.

That the relief prayed for in said petition does not affect any of the numerous defendants except the petitioner and, in their capacity as shipper-owners of the petitioner but only in respect of the specific plan set forth therein, Continental Oil Company, Mid-Continent Petroleum Corporation, Skelly Oil Company, The Texas Company, The Pure Oil Company, Sinclair Refining Company, Cities Service Oil Company and Phillips Petroleum Company, and that the application for the relief prayed for in said petition will not affect any of the defendants other than those above mentioned.

Wherefore, deponent respectfully asks that an order be made herein dispensing with service of a copy of the petition and of notice of application for the relief prayed for therein upon any of the defendants, other than Continental Oil Company, Mid-Continent Petroleum Corporation, Skelly Oil Company, The Texas Company, The Pure Oil Company, Sinclair Refining Company, Cities Service Oil Company and Phillips Petroleum Company, and granting to petitioner such other, further and general relief as to the Court in the premises may seem just and proper.

Subscribed and sworn to before me this 3d day of August, 1942.

[SEAL]

JAMES J. COSGROVE.
DOROTHY J. HEALE,
Notary Public.

Filed in Civil Action No. 14060.

142 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

183 In the United States District Court
for the District of Columbia

[File endorsement omitted.]

Civil Action No. 14060

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

*Order dispensing with service of copy of petition on certain
defendants*

August 3, 1942

Upon reading and filing the petition of Great Lakes Pipe Line Company, dated the 3d day of August, 1942, and the affidavit of James J. Cosgrove, sworn to the 3d day of August, 1942, from which it appears to the satisfaction of the Court that the relief prayed for in said petition does not affect any of the numerous defendants except the petitioner and, in their capacity as shipper-owners of the petitioner but only in respect of the specific plan set forth therein, Continental Oil Company, Mid-Continent Petroleum Corporation, Skelly Oil Company, The Texas Company, The Pure Oil Company, Sinclair Refining Company, Cities Service Oil Company and Phillips Petroleum Company, and that the application for the relief prayed for in said petition will not affect any of the defendants other than those above mentioned.

Now, on motion of Wm. S. Feely, attorney for petitioner, it is this 3d day of August, 1942,

Ordered that service of a copy of said petition of Great Lakes Pipe Line Company and of notice of application
186 for the relief prayed for therein upon any of the defendants other than Continental Oil Company, Mid-Continent Petroleum Corporation, Skelly Oil Company, The Texas Company, The Pure Oil Company, Sinclair Refining Company, Cities Service Oil Company and Phillips Petroleum Company, be and it hereby is dispensed with.

BOLITHA J. LAWS,

Justice.

187

In the United States District Court
For the District of Columbia

Civil Action No. 14,060

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

*Order that plan set forth in petition is not a violation
of said judgment*

August 3, 1942

Upon reading and filing the petition of Great Lakes Pipe Line Company, duly verified the 3d day of August, 1942, and upon the consent of the plaintiff herein and the defendants Continental Oil Company, Mid-Centrent Petroleum Corporation, Skelly Oil Company, The Texas Company, The Pure Oil Company, Sinclair Refining Company, Cities Service Oil Company and Phillips Petroleum Company,

Now, on motion of Wm. G. Feely, Esq., attorney for the petitioner, it is this 3d day of August, 1942:

Ordered, adjudged and decreed that the plan set forth in said petition is not in violation of the terms of the final judgment, entered on the 23d day of December, 1941, and said petitioner may carry said plan into effect, subject to all of the provisions set forth in said petition, all without prejudice to the rights of any of the parties to this cause in any matter other than the specific plan set forth herein.

BOLITHA J. LAWS,

Justice.

We hereby waive service of the foregoing petition and waive notice of and consent to the entry of the foregoing order.

For the Plaintiff:

THURMAN ARNOLD,
Assistant Attorney General.
EDWARD M. CURRAN,
United States Attorney.

For the Defendants:

CONTINENTAL OIL COMPANY,
JAMES J. COSGROVE,
Attorney.

MID-CONTINENT PETROLEUM CORPORATION,
(Signature not legible),
Attorney.

SKELLY OIL COMPANY,
WILLIAM G. FEELY,
Attorney.

THE TEXAS COMPANY,
HARRY T. KLEIN,
Attorney.

THE PURE OIL COMPANY,
EZRA BRAINERD, Jr.,
Attorney.

SINCLAIR REFINING COMPANY,
JAMES W. REID,
Attorney.

CITIES SERVICE OIL COMPANY,
GEORGE F. SHEA,
Attorney.

PHILLIPS PETROLEUM COMPANY,
DON EMERY,
Attorney.

189 In the United States District Court for the District of
Columbia

[File endorsement omitted.]

[Title omitted.]

Statement of Shell Pipe Line Corporation in opposition to Plaintiff's motion directed against Arapahoe Pipe Line Company

Filed February 12, 1958

Shell Pipe Line Corporation, having given notice that it would be adversely affected if the Motion of the Plaintiff for Order For Carrying Out Final Judgment with respect to Arapahoe Pipe Line Company should be granted, avers as follows pursuant to Stipulation and Order filed herein January 30, 1958:

(1) That this defendant was a party defendant to the Final Judgment entered in this cause on December 23, 1941.

(2) That at all times from said date of December 23, 1941, this defendant has engaged as a common carrier in the business of transporting crude oil in interstate commerce by pipe line and has continued as a "Defendant common carrier" as that term is defined in said Final Judgment.

(3) That as of December 31, 1941, the valuation of its properties for the purposes of said Final Judgment amounted to \$30,340,000; that since that date additions and betterments have been made to its common carrier facilities and the valuation thereof for the purposes of said Final Judgment has progressively increased so that as of December 31, 1956 the valuation of its properties amounted to \$98,450,000; that said properties were constructed with funds made available through cash from depreciation and amortization accruals, sales of property, proceeds of loans, and earnings of the company.

(4) That at the time of the entry of said Final Judgment, this defendant had debt outstanding to non-shipper owners in the amount of approximately \$440,000, and that except for a short period of time it has continued to have debt outstanding to non-shipper owners in substantial amounts aggregating at its highest point to approximately \$35,000,000; that each year this defendant submitted to the Department of Justice along with its report under said Final Judgment a balance sheet which set forth the amount of its outstanding debt; that plaintiff at all times knew that this defendant had debt outstanding in substantial amounts to non-shipper owners; that in reliance on the plaintiff's acquiescence in the reports filed by this defendant with the Department of Justice under said Final Judgment without taking exception

to the action of this defendant in reporting its valuation for the purpose of determining permissible dividends to be paid to its shipper owner under said Final Judgment without any deduction from said valuation for borrowed money, this defendant borrowed substantial funds from 1947 up to date and has used said funds for additions and betterments to its pipe line system and has included such additions and betterments in its valuation for the purposes of said Final Judgment.

(5) That since the date of the entry of said Final Judgment, the ratio between outstanding debt and this defendant's capital and earned surplus has always been below 40% and has run at percentages from 12% to 38%.

(6) That this defendant now has in progress the construction of a pipe line system between the newly discovered oil producing provinces off shore of the mouth of the Mississippi River to refineries in Louisiana to be dedicated to the public as a common carrier; that this new pipe line system will cost approximately \$10,000,000; that this defendant does not have funds available to pay for this new pipe line system; that this

defendant has borrowed \$10,000,000 from banks, on 191 notes which this defendant has signed, thus pledging the full equity of all of its pipe line properties and business behind this loan, and in addition this defendant's sole shipper owner, Shell Oil Company, has had to endorse these notes in order that these funds be made available to this defendant.

(7) This defendant adopts as its own and as relating to it, as if it has made the averments, the averments made in the third, fourth, fifth and sixth defenses of Arapahoe Pipe Line Company's response filed herein January 20, 1958, except to the extent that such averments were peculiarly applicable only to financial and corporate phases of Arapahoe and its shipper owner.

[Duly sworn to by George S. Wolbert, Jr.; jurat omitted in printing.]

192 In the United States District Court
for the District of Columbia

[File endorsement omitted.]

[Title omitted.]

Factual statement of Sinclair Pipe Line Company successor to defendant Sinclair Refining Company in opposition to motion of United States v. Arapahoe Pipe Line Company for order carrying out final judgment

Filed February 12, 1958

Charles I. Thompson, 1035 Land Title Building, Philadelphia 10, Penna. Joseph P. Walsh, 600 Fifth Avenue, New York, New York. Dudley C. Phillips, Sinclair Building, Independence, Kansas. Bynum E. Hinton, Jr., 1210 Shoreham Building, Washington 5, D.C. Attorneys for Sinclair Pipe Line Company, Successor to Defendant, Sinclair Refining Company.

193 Sinclair Pipe Line Company (Sinclair Pipe Line), successor to Defendant, Sinclair Refining Company (Sinclair Refining) appears in opposition to Plaintiff's Motion for an Order against Arapahoe Pipe Line Company (Arapahoe) and in support of each and every Defense set forth in Arapahoe's Response. Pursuant to the Stipulation approved by the Court on January 30, 1958 to which it is a party, Sinclair Pipe Line submits the following additive points of variance from the factual situation disclosed by Plaintiff's Motion and Arapahoe's Response:

1. Sinclair Pipe Line has a direct interest in this proceeding because (i) Plaintiff seeks an Order which would prohibit Arapahoe from paying certain dividends to Sinclair Pipe Line to which it is entitled as the owner of one-half of Arapahoe's capital stock, and (ii) the Motion is based upon an unwarranted interpretation of the judgment which, if adopted by the Court, would substantially, and adversely affect Sinclair Pipe Line in other respects.

2. When the Complaint was filed and the judgment entered in this cause on December 23, 1941, Sinclair Pipe Line was not in existence. Sinclair Refining was then engaged in the refining, marketing and transportation branches of the oil business and is a party defendant in this cause. Sinclair Refining then owned extensive facilities for the interstate transportation of crude oil and petroleum products by pipeline which it operated as a separate common carrier department or
194 division of the company. Sinclair Pipe Line was incorporated on November 9, 1950 and acquired the property which had been owned and used for common carrier

purposes by the Pipe Line Department of Sinclair Refining as of the close of business, December 31, 1950. Since January 1, 1951, Sinclair Pipe Line has engaged in the transportation of crude oil and petroleum products by pipeline as a common carrier. Sinclair Refining has continued to engage in other branches of the oil business, but ceased at the end of 1950 to be a common carrier by pipeline. Sinclair Refining and Sinclair Pipe Line are both wholly-owned subsidiaries of Sinclair Oil Corporation (Sinclair Oil), which is the present name of Consolidated Oil Corporation (Consolidated), a defendant shipper-owner.

3. Shortly after the judgment was entered in this cause, and on November 16, 1942, defendant Consolidated (i.e., Sinclair Oil) wrote to the Honorable Thurman Arnold, the then Assistant Attorney General who had negotiated the consented to the judgment on behalf of the United States and was in charge of its enforcement. Said letter sought a ruling and opinion from the Department of Justice that certain financial transactions proposed by Consolidated (Sinclair Oil) and Sinclair Refining and the methods of handling the same would not be in violation of the terms and provisions of the judgment. A copy of said letter is hereto attached as Sinclair Exhibit 1.

4. In response to said letter, the Department of Justice, acting through Mr. Arnold, wrote Consolidated (Sinclair Oil) the letter, copy of which is hereto attached as Sinclair Exhibit 2.

5. In reliance upon said letter, Consolidated (Sinclair Oil) forthwith borrowed the sum of \$15,000,000 and advanced it to Sinclair Refining's Pipe Line Department which utilized said sum for the construction or acquisition of common carrier facilities.

6. In its Reports to the Attorney General covering the years 1942, 1943 and 1944, Sinclair Refining's Pipe Line Department reported its valuations used as earnings basis to have been: for 1942, \$51,399,823; for 1943, \$57,660,418; for 1944, \$67,334,587. Substantially all of the increase in valuation for the year 1943 over 1942, and for the year 1944 over 1943 was attributable to the common carrier facilities constructed or acquired with the monies thus borrowed by Consolidated (Sinclair Oil) from third parties. Pursuant to Mr. Arnold's letter, valuation was reduced to reflect "excess earn-

ings" applied in reduction of the principal thereof. No other deduction from valuation was made in those years (or in any subsequent year) of any sum as having been attributable to said debt. The valuation reported in every year was based upon the latest final valuation of common carrier property owned and used for common carrier purposes made by the Interstate Commerce Commission.* All of the Pipe Line Department's Reports to the Attorney General showed upon their face that earnings available for payments to Sinclair Oil were computed by applying the permissible 7% to the full valuation of its property adjusted as aforesaid, without any deduction for debt other than the abovementioned deduction required by Mr. Arnold's letter. All of said reports also showed upon their face that no earnings were transferred to the special surplus account provided for in Paragraph V of the judgment, except earnings in excess of 7% of full I.C.C. valuation adjusted as aforesaid.

7. As hereinabove stated, Sinclair Pipe Line acquired the common carrier facilities of the Pipe Line Department of Sinclair Refining as of the close of business December 31, 1950. The history of Sinclair Refining's Pipe Line Department is summarized in the Valuation Reports of the Interstate Commerce Commission published at 51 I.C.C. Val. Rep. 273, et seq. The history of certain of its predecessor companies is set forth in the Interstate Commerce Commission's Valuation Reports of two of said companies at 47 I.C.C. Val. Rep. 613, et seq. The facts therein found by the Interstate Commerce Commission are true and correct, and reference is made thereto. As by reference to said Reports will more fully appear, said predecessor companies, or some of them, had from time to time incurred indebtedness for the construction or acquisition of common carrier property and prior to the entry of the judgment had repaid the same out of earnings. At no time did Sinclair Refining's Pipe Line Department make any deduction from valuation used as earnings basis, of any sum attributable to the value of property which had been

* In making adjustments to I.C.C. valuation for additions and betterments, depreciation and retirements, the Pipe Line Department used the so-called "pro rata" method of bringing valuation down to date, which is now under attack by the Department of Justice in a collateral and simultaneous Motion filed in this cause against Service Pipe Line Company, but is not an issue raised by the Motion against Arapahoe.

acquired by predecessor companies prior to the entry of the judgment with funds borrowed from lending institutions. Similarly, no deduction on account of said pre-judgment debts has ever been made by Sinclair Pipe Line.

8. Sinclair Pipe Line's first Report to the Attorney General under Paragraph V of the judgment covered the year 1951 and was dated April 11, 1952. It reported \$108,676,555 as its valuation for computation of the 1951 permissible 7% dividend. Said valuation was based upon the latest final valuation made by the I.C.C. of the property which had been owned and used for common carrier purposes by Sinclair Refining's Pipe Line Department and was adjusted for additions and betterments, depreciation and retirements all as provided in Paragraph III of the judgment. Said valuation was reduced, pursuant to the above letter from Mr. Arnold, to reflect excess earnings which its predecessor, Sinclair Refining's Pipe Line Department had applied toward the retirement of the above described debt. No other amount attributable to indebtedness was deducted. The permissible distribution to its shipper-owner was computed by applying 7% of said valuation.

9. On July 7, 1951, the Interstate Commerce Commission issued its final valuation, made as of December 31, 1947, of the property which had, as of said date, been owned and used for common carrier purposes by Sinclair Refining's Pipe Line Department. (51 I.C.C. Val. Rep. 273). From and after said date, and until the next final valuation by the Commission, Sinclair Pipe Line used said 1947 valuation as the basis for its reports to the Attorney General, making the adjustments described above but without deducting therefrom any additional amount attributable to indebtedness.

10. In 1951 the Sinclair Pipe Line entered upon a program of substantial expansion of its common carrier facilities and required public financing for said project. As of August 1, 1951, Sinclair Pipe Line executed an Indenture to Chase National Bank of New York, Trustee, which contemplated the issuance of a total of \$80,000,000 face amount of twenty-five year 3 $\frac{3}{8}$ % sinking fund debentures to Metropolitan Life Insurance Company and The Equitable Life Assurance Society of the United States. Bonds in the amount of \$35,000,000 were issued thereunder to said companies as of August 1, 1951. \$45,000,000 of additional bonds were issued to the same companies during 1952. As of December 31, 1953, the outstanding

unmatured long-term funded debt due to said third parties was \$80,000,000. The existence and amount of said unmatured funded debt owed to said third parties, the name of the Trustee and the identity of the purchasers, was duly reported by Sinclair Pipe Line in its Form P Reports to the Interstate

Commerce Commission for the year 1951 and each year thereafter. Said unmatured funded debt has also been included each year since 1951 in the "Statistics of Oil Pipe Line Companies" which are annually issued and published by the Commission. The Department of Justice has therefore had notice and knowledge thereof since 1951.

11. On April 12, 1955 Sinclair Pipe Line filed its Annual Report to the Attorney General for the calendar year 1954 as required by Paragraph III of the judgment. A copy of said Report is attached hereto as Sinclair Exhibit 3. When said Report was filed the latest final I.C.C. valuation of Sinclair Pipe Line's property, which had then been received by it, was the abovementioned 1947 valuation which had been issued on July 5, 1951 and is reported at 51 I.C.C. Val. Rep. 273.* As by reference to Sinclair Pipe Line's Report will more fully appear, the company stated its valuation of its property owned and used for common carrier purposes as of December 31, 1953 as having been \$147,510,831, and adjusted it by adding the "pro rata" value of additions and betterments made during the year 1954 and deducting the "pro rata" value of retirements made during 1954. By this method Sinclair Pipe Line reached a revised figure from which it deducted the amount of valuation attributable to excess earnings which its predecessor, Sinclair Refining-Pipe Line Department, had applied toward the payment of the 1942 debt described above. The figure thus computed, amounting to \$147,608,031, was accordingly reported to the Attorney General as the valuation used in computing the 1954 7% permissible dividend. The valuation made as of December 31, 1953 and the adjusted valuation both included the value of the common carrier facilities constructed or acquired with monies borrowed from Metropolitan Life Insurance Company and The Equitable Life Assurance Society of the United States. The above described

* Sinclair Pipe Line like its predecessor, Sinclair Refining, used the so-called "pro rata" method of bringing valuation down to date which is under attack by the Department of Justice in its Motion filed against Service Pipe Line Company.

reporting method employed by Sinclair Pipe Line in its Report for the year 1954 is the same method which had been employed by Sinclair Refining-Pipe Line Department and Sinclair Pipe Line in all Reports prior to 1954 and is the method employed by Sinclair Pipe Line subsequent to the year 1954. Such method has been apparent on the face of such Reports.

12. As further appears upon the face of its Report for 1954 to the Attorney General, Sinclair Pipe Line earned \$8,973,384 during the year 1954. Said sum was slightly less than 7% of the \$147,608,031 reported by it as the valuation used as its earnings basis for said year and Sinclair Pipe Line accordingly claimed the full 7% or \$10,332,562 as being the amount of its permissible distribution. Sinclair Pipe Line further showed on the face of its Report that no excess earnings were accumulated during the year 1954. The amounts thus reported as having been earned and as being distributable were both substantially in excess of the amount which would have

201 been available for distribution if the judgment had required Sinclair Pipe Line to deduct from the valuation used as its earnings basis the value of property which had been constructed or acquired with monies borrowed from the Life Insurance Companies. Had there been any such requirement in the judgment, Sinclair Pipe Line would have been required to retain, transfer to special surplus and "freeze" a substantial amount of "excess earnings".

13. On April 8, 1955 the Interstate Commerce Commission in Valuation Docket #1329 (55 I.C.C. Val. Rep. 25) made a final valuation as of December 31, 1953 of \$147,875,000 of the property of Sinclair Pipe Line owned and used for common carrier purposes. Said Commission valuation included the value of the common carrier facilities constructed or acquired with the proceeds of the loan from the Life Insurance Companies, and is slightly higher than the valuation which was reported by Sinclair Pipe Line. Sinclair Pipe Line had not yet received its copy of said valuation when it forwarded its report for 1954 to the Attorney General on April 12, 1955.

14. At some time prior to April 28, 1955 the Department of Justice received its copy of said I.C.C. final valuation, studied the same and compared it with Sinclair Pipe Line's Report to the Attorney General for the year 1954. The said I.C.C. valuation included the following statement of facts

with respect to Sinclair Pipe Line's unmatured funded debt:

202 "Capital stock and long-term debt.—The carrier has outstanding on December 31, 1953, . . . a total of \$80,000,000 par value long-term debt, classified as funded debt unmatured, consisting of 25 year, 3 $\frac{3}{8}$ percent, sinking-fund debentures nominally issued August 1, 1951; \$35,000,000 issued August 1, 1951; \$30,000,000 issued February 1, 1952 and \$15,000,000 issued August 1, 1952." (55 I.C.C. Val. Rep. 25, 27.)

The said I.C.C. valuation also included the General Balance Sheet of Sinclair Pipe Line as of December 31, 1953 showing the total assets of \$200,224,296 and on the Liability Side the following item: "Long-term debt, funded debt unmatured \$80,000,000." The Department of Justice had both notice and knowledge of said indebtedness and the inclusion of the value of the property constructed or acquired with the proceeds of said loan in the I.C.C. valuation when it wrote the letter to Sinclair Pipe Line hereinafter referred to.

15. On April 28, 1955 the Department of Justice, acting through Assistant Attorney General Stanley N. Barnes, wrote Sinclair Pipe Line the letter, copy of which is attached as Sinclair Exhibit 4.

16. On May 18, 1955 Sinclair Pipe Line wrote the Department of Justice the letter, copy of which is attached as Sinclair Exhibit 5.

17. On January 10, 1956 and on January 22, 1957, respectively, the Interstate Commerce Commission in Valuation Docket #1329 (55 I.C.C. Val. Rep. 247 and 831) made final valuations as of December 31, 1954 and December 31, 1955 of \$155,923,500 and \$151,514,500 respectively, of the property of Sinclair Pipe Line owned and used for common carrier purposes. Said valuations were sent by the Commission to the Attorney General sec. leg., and pursuant to the Commission's invariable practice showed upon their face under the caption "Capital Stock and Long-Term Debt" and in the carrier's printed balance sheets the existence and status of the abovementioned long-term debt. As each of said valuations was received in January, Sinclair Pipe Line in making its Report in April of 1956 for the year 1955 and in April of 1957 for the year 1956, was able to use current valuations of the I.C.C. (with minor adjustments similar to

those made in its 1954 Report) in making its Reports to the Attorney General. As it and its predecessor had done in all prior years, Sinclair Pipe Line disclosed upon the face of its Reports that it was computing permissible dividends on valuation without deduction of any amount attributable to debt due the Life Insurance Companies. In the Reports for each of the years 1955 and 1956 Sinclair Pipe Line reported earnings available for dividends to its shipper-owner which were substantially in excess of the amounts which would have been available and permissible if Sinclair Pipe Line had been required to deduct from the I.C.C. valuation the value of its property attributable to the debt due said third parties.

204 18. Sinclair Pipe Line owns 5.88% of the capital stock of Great Lakes Pipe Line Company (Great Lakes) which it acquired in 1951 from Sinclair Refining. The latter company owned said shares when the Supplemental Order was entered by Justice Bolitha J. Laws on August 3, 1942 upon the petition of Great Lakes and with the consent of its stockholders. Since that date Sinclair Refining (or its successor, Sinclair Pipe Line) has received dividends from Great Lakes in reliance upon said Order which were computed upon the full valuation of its property as adjusted, without any deduction from valuation attributable to the indebtedness incurred pursuant to the Plan approved by the Court and the Attorney General. The Department of Justice had always had current knowledge of the foregoing facts from Great Lakes' Reports to the Attorney General, from its Form P Reports to the I.C.C., from the annual "Statistics" published by the I.C.C. and from the I.C.C. Valuation Reports relating to Great Lakes. No protest was ever made and no question was ever raised by the Department of Justice with respect to the Great Lakes' method of computing earnings available for distribution or its payments of dividends to Sinclair Refining, Sinclair Pipe Line or any other Great Lakes stockholder.

19. Sinclair Pipe Line also owns a minority interest in the stock of other interstate common carrier pipe lines, some of which are subject to the judgment and all of which have borrowed monies from third parties for the construction
205 and acquisition of carrier facilities. All of said companies compute permissible dividends by applying 7% to adjusted I.C.C. valuation without deduction of any

amount attributable to debt. No protest was ever made and no question was ever raised with respect to the propriety of said procedure until this Motion was filed against Arapahoe.

20. Sinclair Pipe Line adopts and incorporates by reference herein each and every factual averment made in Arapahoe's Response.

21. Sinclair Pipe Line has both received and paid dividends during the entire period of its corporate existence in reliance upon the facts hereinabove set forth and the facts averred in Arapahoe's Response.

Wherefore, Sinclair Pipe Line respectfully moves the Court that the Motion against Arapahoe be denied and dismissed.

Respectfully submitted.

CHARLES I. THOMPSON,

JOSEPH P. WALSH,

DUDLEY C. PHILLIPS,

BYNUM E. HINTON, Jr.,

Attorneys for Sinclair Pipe Line Company.

By Charles I. Thompson,

CHARLES I. THOMPSON,

Bynum E. Hinton, Jr.,

BYNUM E. HINTON, Jr.

FEBRUARY 12, 1958.

206

[Duly sworn to by Charles I. Thompson; jurat omitted in printing.]

208

Sinclair Exhibit No. 1 to statement

NOVEMBER 16, 1942.

Re: United States of America v. The Atlantic Refining Company, et al. Civil Action No. 14060, District Court of the United States for the District of Columbia

HON. THURMAN W. ARNOLD,

Assistant Attorney General,

Department of Justice, Washington, D.C.

DEAR SIR: Consolidated Oil Corporation (hereinafter referred to as "Consolidated") and its wholly owned subsidiary, Sinclair Refining Company (hereinafter referred to as "Sinclair"), are defendants in the above entitled action and parties to the final judgment entered therein on December 23, 1941 (hereinafter referred to as the "Consent Decree").

Consolidated, as a shipper owner, proposes to borrow from third parties the sum of \$15,000,000, such loan to be evidenced by Consolidated's interest-bearing notes. Simultaneously with such transaction, Consolidated proposes to loan to Sinclair the sum of \$15,000,000 for the use of its Pipeline Department in constructing and acquiring extensions, additions and betterments to its common carrier pipeline facilities. This latter loan will be evidenced by the note or notes of Sinclair to Consolidated with maturities and interest rate which will correspond to the maturities and interest rate of Consolidated's loan obligation to third parties.

Based upon the above statement of facts and discussions with representatives of your Department, it is understood that so-called excess earnings of Sinclair's Pipeline Department computed as provided in Paragraph III of the above-mentioned Consent Decree could be utilized as accumulated from time to time by Sinclair in retiring its aforesaid loan obligation to Consolidated, provided:

(1) For the purpose of subsequent computations under said Paragraph III, the valuation of the Pipeline Department shall be reduced to the extent of excess earnings applied in reduction of the principal of the loan;

(2) The amount of earnings which the Pipeline Department would be otherwise permitted to distribute to Consolidated under said Paragraph III shall be reduced by an amount equal to the amount of any interest on said loan obligations paid by Sinclair or its Pipeline Department to Consolidated; and

209 (3) Excess earnings and the special surplus representing such earnings could not be used by Sinclair or its Pipeline Department for any purpose except the retirement of the aforesaid loan obligation to Consolidated until such loan shall be fully discharged; and in addition the excess earnings and special surplus which Sinclair or its Pipeline Department may have under Paragraph V of the above-mentioned Consent Decree shall be used for the purpose of retiring the afore-said loan obligation.

In our opinion the transactions proposed herein and the methods of handling the same under the Consent Decree are not in violation of the terms and provisions of the Decree; however, before proceeding further we would like your opinion in regard thereto.

Thanking you for your cooperation in the matter, I am
Sincerely,

CONSOLIDATED OIL CORPORATION,
By P. C. SPENCER,

Attorney.

211

Sinclair Exhibit No. 2 to statement

DEPARTMENT OF JUSTICE

WASHINGTON, D.C.

NOVEMBER 17, 1942.

Re: United States of America v. The Atlantic Refining
Company, et al.

CONSOLIDATED OIL CORPORATION,
New York, New York.

Attention: Mr. P. C. Spencer, Attorney.

GENTLEMEN: Reference is made to your letter of November 16, 1942, setting forth the proposed transactions which Consolidated Oil Corporation and its wholly owned subsidiary, Sinclair Refining Company, are about to enter into with respect to the loan of \$15,000,000 for the use of the Pipeline Department of Sinclair Refining Company in constructing or acquiring extensions, additions and betterments to its common carrier pipeline facilities.

We note that as a part of the proposed transaction, among other things, the following three conditions will be observed:

(1) For the purpose of subsequent computations under said Paragraph III, the valuation of the Pipeline Department shall be reduced to the extent of excess earnings applied in reduction of the principal of the loan;

(2) The amount of earnings which the Pipeline Department would be otherwise permitted to distribute to Consolidated under said Paragraph III shall be reduced by an amount equal to the amount of any interest on said loan obligation paid by Sinclair or its Pipeline Department to Consolidated; and

212 (3) Excess earnings and the special surplus representing such earnings could not be used by Sinclair or its Pipeline Department for any purpose except the retirement of the aforesaid loan obligation to Consolidated until such loan shall be fully discharged; and in addition the excess earn-

ings and special surplus which Sinclair or its Pipeline Department may have under Paragraph V of the above-mentioned Consent Decree shall be used for the purpose of retiring the aforesaid loan obligation.

After consideration of the transactions outlined in your letter, we are of the opinion that Consolidated Oil Corporation and Sinclair Refining Company may carry out such transactions without violating the terms and provisions of the final judgment.

In order to aid us in analyzing the report to be made by the common carrier under the provisions of Paragraph VIII of the final judgment, it will be greatly appreciated if Sinclair Refining Company, Pipeline Department, will advise us as to the nature of the additions, betterments or extensions constructed or acquired with the proceeds of the loan made to the common carrier.

Very truly yours,

Thurman Arnold,
THURMAN ARNOLD,
Assistant Attorney General.

214

Sinclair Exhibit No. 3 to statement

Re: Final Judgment (Consent Decree).—United States vs. The Atlantic Refining Company, et al.—Annual Report for 1954

THE ATTORNEY GENERAL,

Department of Justice, Washington, D.C.

DEAR SIR: The following information is submitted in compliance with Section VIII of the Final Judgment and Decree entered by the District Court of the United States for the District of Columbia, in the case of United States of America, Plaintiff, vs. The Atlantic Refining Company, et al., Defendants (Civil Action No. 14060).

- (1) The valuation of common carrier pipe line properties of Sinclair Pipe Line Company, used as an earnings basis for the calendar year 1954, was ----- \$148,536,383
- Less: Excess Earnings in the amount of \$1,802,975 (for the years 1942 and 1943) applied in reduction of the loan by Sinclair Oil Corporation (formerly Consolidated Oil Corporation) to Sinclair Refining Company—Pipe Line Department, covered by agreement of Thurman Arnold, Assistant Attorney General, in his letter to Consolidated Oil Corporation dated November 17, 1942. There has been deducted from said amount of \$1,802,975 depreciation from January 1, 1945 to December 31, 1953, amounting to \$874,623 ----- 928,352

147,608,031

(For information and data with respect to the methods used in computing said valuation, see Exhibit "A" attached hereto)

- (2) Total earnings of Sinclair Pipe Line Company for the year 1954 (excluding dividends in the sum of \$1,559,536 received by it on corporate stock owned in other corporations) for the purpose of accounting under the Consent Decree amount to \$8,973,384. As shown in Exhibit "A" the amount distributable computed at 7% of valuation was \$10,332,562. (For further information with respect to the method of determining depreciation charges for the purpose of computing the earnings above stated, reference is made to the attached Exhibit "B")
- (3) During the year 1954 dividends in the amount of \$3,000,000 were credited or paid to stockholders or affiliates. Of this amount, \$1,559,536 represents distribution of dividends received with respect to shares of capital stock owned in other companies and the balance of \$3,440,464 represents distribution of a portion of earnings unrestricted under the Consent Decree.

- (4) As shown in paragraph (2) above, no excess earnings were accumulated during the year 1954. Total earnings of Sinclair Pipe Line Company for that year were less than the amount of distributable earnings based on 7% of valuation.

To the best of my knowledge and belief, the above information has been computed in accordance with the requirements of said Decree. The filing thereof, however, shall not constitute or be construed to constitute an acceptance by the undersigned of the valuation therein stated as representing the proper valuation of the properties covered thereby for rate-making purposes, or as an acceptance of the methods utilized in arriving at such valuation. Accordingly, the undersigned does not hereby waive, but expressly reserves, its full legal rights to contest said valuation and the method or methods by which it is computed before the courts or otherwise. If the above statement of valuation or earnings shall be subsequently determined to be in error for any reason, then the undersigned hereby reserves the right to correct the same by the filing of an amended report or by amending, supplementing, revising or otherwise changing the instant report in all respects necessary to properly reflect the results of such corrections.

Respectfully submitted:

SINCLAIR PIPE LINE COMPANY,
By William H. Morris
WILLIAM H. MORRIS, *President.*

Exhibit A to Exhibit 3

SINCLAIR PIPE LINE COMPANY

INTERSTATE COMMERCE COMMISSION'S FINAL VALUE AS OF DECEMBER 31, 1947, OF THE PROPERTY OF SINCLAIR PIPE LINE COMPANY OWNED AND USED FOR COMMON CARRIER PURPOSES BROUGHT UP TO DECEMBER 31, 1953, BY APPLICATION OF COMMISSION'S METHODS

April, 1955

"A"

SINCLAIR PIPE LINE COMPANY

Valuation data pertaining to report for the year 1954 under provisions of Section VIII of the Final Judgment and Decree (United States v. Atlantic Refining Company et al.), Year 1954

Valuation of Properties at January 1, 1954..... \$147,510,831

Major Additions Year 1954:

Sinclair Pipe Line Company's Interest
in the Harbor Products System and
related facilities.....

\$4,179,269

In operation in August, 1954: 4/12
of \$4,179,269.....

1,393,090

Monroe-Blue Island 12"
and 16" Line.....

\$982,632

In operation in April,
1954.....

\$244,218

8/12 of \$244,218.....

\$162,812

In operation in Au-
gust, 1954.....

\$738,414

4/12 of \$738,414.....

246,138

408,950

Major Retirement Year 1954: Sale of one-
third interest as of April 1, 1954, in our
Corpus Christi, Austin, San Antonio
Products System.....

\$1,035,318

9/12 of \$1,035,318.....

(776,488)

162 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

Valuation data pertaining to report for the year 1954 under provisions of Section VIII of the Final Judgment and Decree (United States v. Atlantic Refining Company et al), Year 1954—Continued

Deduct: Excess earnings in the amount of \$1,802,975 (For the years 1942 and 1943) applied in reduction of the loan by Sinclair Oil Corporation (Formerly Consolidated Oil Corporation) to Sinclair Refining Co.—Pipe Line Department, covered by agreement of Thurman Arnold, Asst. Attorney General, in his letter to Consolidated Oil Corporation dated November 17, 1942. There has been deducted from said amount of \$1,802,975 depreciation from January 1, 1945, to December 31, 1953, amounting to \$874,623.

\$928,352

147,608,031

Distributable Earnings—7% of above

10,332,562

() Denotes Red Figure.

218

Exhibit A-1 to Exhibit 3

Valuation Report for Pipe Line Property of Sinclair Pipe Line Company as of December 31, 1953

SUMMARY

Interstate Commerce Commission's final value at December 31, 1947	\$91,075,000
The above valuation brought up to December 31, 1953 in accordance with Commission Method	147,510,822

This value is supported by the following tables:

Table I. The Interstate Commerce Commission's final valuation of Pipe Line Property as of December 31, 1947 brought up to December 31, 1953 showing corresponding elements of value.

Table II. Original cost and cost of reproduction new and less depreciation at December 31, 1947 and at December 31, 1953.

Table III. Period Price indices for pipe line construction by the Bureau of Accounts, Cost Finding and Valuation of the Interstate Commerce Commission.

Table IV. Determination of working capital as of December 31, 1953.

[Supporting Tables and Exhibit B omitted as irrelevant.]

220

*Sinclair Exhibit No. 4 to Statement*DEPARTMENT OF JUSTICE
WASHINGTON, D.C.

APRIL 28, 1955:

Mr. WILLIAM H. MORRIS,
*President, Sinclair Pipe Line Company, Sinclair Building,
Independence, Kansas.*

DEAR MR. MORRIS: We have your letter of April 12, 1955, addressed to the Attorney General, enclosing the annual report of your company for the calendar year 1954, as required by Paragraph VIII of the final judgment entered in the case of United States v. The Atlantic Refining Company, et al., Civil Action No. 14060. The report is being placed in the files of this Department.

We note that in computing the valuation base on which to calculate the 7% permissible payment your company adopted an amount of \$147,510,831 as valuation on December 31, 1953 instead of the amount of \$147,875,000 found by I.C.C. on April 8, 1955 to have been the valuation of owned and used carrier property as of December 31, 1953. We also note that, contrary to the provision of Paragraph III(a) of the judgment, you increased your valuation by approximately \$1,025,500, representing changes in value of property made in the calendar year 1954. Please advise as to the reasons for your use of a revaluation computation based on 1947 valuation rather than latest I.C.C. valuation and for the addition of value of property during the year 1954.

In view of your company's failure to use the I.C.C. latest final valuation we are unable to understand the qualifications and reservations set forth in the last paragraph of your letter.

Sincerely yours,

Stanley N. Barnes,
STANLEY N. BARNES,
Assistant Attorney General.

MAY 18, 1955.

MR. STANLEY N. BARNES,
Assistant Attorney General, Department of Justice,
Washington, D.C.

DEAR SIR: In your letter to Mr. W. H. Morris of April 28, 1955 you asked two questions concerning the report of Sinclair Pipe Line Company which was rendered for the calendar year 1954, pursuant to Paragraph VIII of the Consent Decree entered December 23, 1941 in Civil Action No. 14060, United States of America v. The Atlantic Refining Company, et al.

Your questions are directed to the application of Paragraph III(a) of the Decree which provides;

"(a) Valuation as hereinabove used shall mean the latest final valuation of each common carrier's property owned and used for common carrier purposes as made by the Interstate Commerce Commission. To the latest final valuation of the commission shall be added the value of additions and betterments to the common carrier property made after the date of such latest final valuation, and from this sum shall be deducted appropriate amounts for physical depreciation on, and retirements of, common carrier property, computed by the carrier as of the close of the next preceding year, in accordance with the methods used by the Interstate Commerce Commission in bringing valuations down to date, the classifications of property to conform to the uniform system of accounts for pipelines prescribed by the Interstate Commerce Commission"

It was noted, in your letter, that we reported the valuation of our carrier property as \$147,510,831.00. This valuation was computed by us in accordance with the methods used by the Interstate Commerce Commission in bringing valuations down to date. We computed the valuation because the I.C.C. valuation of our carrier property for the year 1953 had not been released to us at the time when the report was due. In the future we hope to have received from the I.C.C. the valuation of our carrier properties, as of the close of the next preceding year, in time to include that valuation in our report to the Department of Justice. In that event we intend to delete the last paragraph of the customary letter we send with our report.

223 It was further noted, in your letter, that we increased our valuation by the amount of \$1,025,500.00, which sum represents the net value of major items of carrier property brought into service or retired from service during the calendar year 1954.

Our company has for many years followed the practice of adding to the valuation of carrier property that portion of the estimated valuation of each major facility placed in service during the year which the number of months the facility was in service during the year bears to the total months of the year. And conversely, we have deducted that portion of the estimated valuation of each major facility retired or sold which the number of months the facility was not in service during the year bears to the total months of the year. Our reports to the Department of Justice have clearly disclosed our practice and no objection has been made heretofore.

It is our view that the general purpose of the Consent Decree is to limit payments to shipper-owners to 7% of the valuation of facilities in service. If a facility is in service it is revenue producing, if a facility has been sold or retired from service it will produce no revenue. Since the Consent Decree is intended to limit the return on investment to shipper-owners it seems proper to include in the valuation base for a calendar year all major facilities which are brought into service and to exclude all major facilities which are sold or retired during the year. Valuations will thereby keep pace with investments. This approach seems to us to be consistent with the language and the general purpose and intent of the Decree.

This letter is addressed to you by the undersigned in the absence of Mr. Morris.

Yours very truly,

R. C. BEARDEN,
Executive Vice President.

224 In the United States District Court for the
District of Columbia

[File endorsement omitted.]

[Title omitted.]

Statement of defendant, the Texas Pipe Line Company, relating to motion of plaintiff with respect to Arapahoe Pipe Line Company, filed pursuant to stipulation and order, of January 30, 1958

Filed February 12, 1958

The defendant, The Texas Pipe Line Company, having given notice that it would be adversely affected if the Motion of the plaintiff for Order For Carrying Out Final Judgment with respect to Arapahoe Pipe Line Company should be granted, avers the following pursuant to Stipulation and Order filed herein January 30, 1958:

1. That it is a defendant common carrier as defined in the judgment herein and is engaged in the transportation of crude oil by pipeline.

2. That this defendant's property, owned and used for common carrier purposes, is valued in excess of \$123,013,297; its capital stock, all issued for cash, is \$26,000,000; and its funded debt, all due to banks and insurance companies, presently aggregates about \$52,644,333, has never been in excess of \$60,347,333 at any time, and none was owned prior to 1947.

225 It had no debt at the date of the judgment, and it never has borrowed from its shipper-owner.

3. The aforesaid borrowings are more particularly described as follows: In 1948 and 1949 this defendant borrowed \$43,500,000 from banks, and after repayment of \$3,500,000 refinanced those loans in December, 1949 with a \$25,000,000 insurance company loan and \$15,000,000 bank loan; and in 1952 and 1953, this defendant borrowed from insurance companies an additional \$27,000,000. The proceeds of these loans, plus cash from depreciation and amortization accruals, sales of property and cash from 7% earnings and excess earnings above 7%, all together aggregating \$122,000,000, were spent for a multitude of plant expansions and replacements.

4. With the exception of \$7,500,000 borrowed in 1949 (refinanced later in 1949 as aforesaid), the loan agreements relat-

ing to the foregoing loans, as well as the "Thruput Agreements" entered into by this defendant's shipper-owner in connection with each of said loans, are substantially like those in the Arapahoe case. This defendant also avers that said loans were made in reliance upon the commitments made by this defendant's shipper-owner in said Thruput Agreements and would not have been made without such agreements or agreements of a substantially equivalent nature.

5. This defendant avers that it has paid dividends to its shipper-owner, but in doing so it has not deducted from the valuation of its common carrier property, before computing its shipper-owner's permissible dividends, any amounts which could be considered as attributable to the foregoing debts; and this defendant avers that any such deduction is not required by the judgment.

6. This defendant adopts as its own and as relating to it—as if it had made the averments—the averments made in the Third, Fourth, Fifth and Sixth Defenses of Arapahoe Pipe Line Company's Response filed herein January 20, 1958, except to the extent that such averments are peculiarly applicable only to financial and corporate phases of Arapahoe and its shipper-owners. In addition, this defendant (A) specifically avers, in adopting Arapahoe's Fourth Defense that

"The facts averred in said defense were known to and relied upon by this defendant's owner when it entered into the Thruput Agreements and other lending arrangements above referred to; and this defendant, in rendering its reports to the Attorney General of the United States pursuant to paragraph VIII of said consent judgment, relied upon its knowledge of said facts, and made its determination of valuation and computed its permissible dividends in conformity with the long continued understanding, interpretation and construction of said judgment by all the parties thereto;

and (B) specifically avers, in adopting Arapahoe's Sixth Defense, that this defendant's shipper-owner is and since prior to August 3, 1942, has been a stockholder in Great Lakes Pipe Line Company; and

"The officers and directors of this defendant have at all times been familiar with the facts stated in said Sixth Defense and said order of August 3, 1942; that this defendant relied thereon in its computation of valuation used as earnings basis in its several reports to the Attorney General of the United States;

227 and that, as to this defendant and its shipper-owner, said order is *res judicata*."

Respectfully submitted.

John J. Wilson,
JOHN J. WILSON,

Address: 815 15th Street, NW., Washington 5, D.C.,

O. J. Dorwin,
O. J. DORWIN,
Edward H. Schlaudt,
EDWARD H. SCHLAUDT,

Address: 135 East 42nd Street, New York,
New York,

Attorneys for defendant,
The Texas Pipe Line Company.

Of counsel:

WHITEFORD, HART, CARMODY & WILSON,
815 15th Street, NW., Washington 5, D.C.

[Duly sworn to by Edward H. Schlaudt; jurat omitted in printing.]

228 In the United States District Court
for the District of Columbia

[File endorsement omitted.]

[Title omitted.]

Statement of Defendant, Texaco-Cities Service Pipe Line Company (formerly named the Texas-Empire Pipe Line Company), relating to motion of plaintiff with respect to Arapahoe Pipe Line Company, filed pursuant to stipulation and order, on January 30, 1958.

Filed February 12, 1958

The defendant, Texaco-Cities Service Pipe Line Company (formerly named The Texas-Empire Pipe Line Company), having given notice that it would be adversely affected if the Motion of the plaintiff for Order For Carrying Out Final Judgment with respect to Arapahoe Pipe Line Company should be granted, avers the following pursuant to Stipulation and Order filed herein January 30, 1958:

1. That it is a defendant common carrier as defined in the judgment herein and is engaged in the transportation of crude oil by pipeline.

2. That this defendant's property, owned and used for common carrier purposes, is valued in excess of \$31,019,287; its capital stock, all issued for cash, is ~~\$3,000,000~~; and its funded debt presently aggregates about \$9,000,000, and has never been in excess of \$15,000,000 at any time. It owed
 229 \$2,100,000 at the date of judgment. It has never borrowed from its shipper-owners.

3. Loan agreements relating to the foregoing debt, as well as "Thruput Agreements" entered into by this defendant's shipper-owners, are substantially like those in the Arapahoe case. This defendant also avers that loans were made in reliance upon the commitments made by this defendant's shipper-owners in said Thruput Agreements and would not have been made without such agreements or agreements of a substantially equivalent nature.

4. This defendant avers that it has paid dividends to its shipper-owners, but in doing so it has not deducted from the valuation of its common carrier property, before computing its shipper-owners' permissible dividends, any amounts which could be considered as attributable to the foregoing debt; and this defendant avers that any such deduction is not required by the judgment.

5. This defendant adopts as its own and as relating to it—as if it had made the averments—the averments made in the Third, Fourth, Fifth and Sixth Defenses of Arapahoe Pipe Line Company's Response filed herein January 20, 1958, except to the extent that such averments are peculiarly applicable only to financial and corporate phases of Arapahoe and its shipper-owners. In addition, this defendant (A) specifically avers, in adopting Arapahoe's Fourth Defense that

"The facts averred in said defense were known to and relied upon by this defendant's owners when they entered into the Thruput Agreements and other lending arrangements above referred to; and this defendant, in rendering its reports to the

Attorney General of the United States pursuant to para-
 230 graph VIII of said consent judgment, relied upon its knowledge of said facts, and made its determination of valuation and computed its permissible dividends in conformity with the long continued understanding, interpretation and construction of said judgment by all the parties thereto;"

and (B) specifically avers, in adopting Arapahoe's Sixth Defense, that this defendant's shipper-owners are and since prior to August 3, 1942, have been stockholders in Great Lakes Pipe Line Company; and

"The officers and directors of this defendant have at all times been familiar with the facts stated in said Sixth Defense and said order of August 3, 1942; that this defendant relied thereon in its computation of valuation used as earnings basis in its several reports to the Attorney General of the United States; and that, as to this defendant and its shipper-owners, said order is *res judicata*."

Respectfully submitted.

John J. Wilson,

JOHN J. WILSON,

Address: 815 15th Street, NW., Washington 5, D.C.

O. J. Dorwin,

O. J. DORWIN,

Edward H. Schlaudt,

EDWARD H. SCHLAUDT,

Address: 135 East 42nd Street, New York, New York

Attorneys for defendant, *Teneco-Cities Service Pipe Line Company* (formerly named *The Texas-Empire Pipe Line Company*)

Of Counsel:

WHITEFORD, HART, CARMODY & WILSON

815 15th Street, NW.

Washington 5, D.C.

231 [Duly sworn to by Edward H. Schlaudt; jurat omitted in printing.]

232 In the United States District Court for the District of Columbia

[File endorsement omitted.]

[Title omitted.]

Statement of defendant, *Texas-New Mexico Pipe Line Company*, relating to motion of plaintiff with respect to *Arapahoe Pipe Line Company*, filed pursuant to stipulation and order, of January 30, 1958

Filed February 12, 1958

The defendant, *Texas-New Mexico Pipe Line Company*, having given notice that it would be adversely affected if the

Motion of the plaintiff for Order For Carrying Out Final Judgment with respect to Arapahoe Pipe-Line Company should be granted, avers the following pursuant to Stipulation and Order filed herein January 30, 1958:

1. That it is a defendant common carrier as defined in the judgment herein and is engaged in the transportation of crude oil by pipeline.

2. At the end of the year 1956, this defendant's property, owned and used for common carrier purposes, was valued in excess of \$33,381,899; its capital stock, all issued for cash, was \$12,000,000, and its funded debt aggregated about 233 \$4,715,278, and was never in excess of \$5,500,000 prior to September 23, 1957.* It owed \$700,000 at the date of judgment; and it never has borrowed from its shipper-owners.

3. This defendant avers that it has paid dividends to its shipper-owners, but in doing so it has not deducted from the valuation of its common carrier property, before computing its shipper-owners' permissible dividends, any amounts which could be considered as attributable to the foregoing debt; and this defendant avers that any such deduction is not required by the judgment.

4. This defendant adopts as its own and as relating to it—as if it had made the averments—the averments made in the Third, Fourth, Fifth and Sixth Defenses of Arapahoe Pipe Line Company's Response filed herein January 20, 1958, except to the extent that such averments are peculiarly applicable only to financial and corporate phases of Arapahoe and its shipper-owners. In addition, this defendant (A) specifically avers, in adopting Arapahoe's Fourth Defense that

"The facts averred in said defense were known to and relied upon by this defendant in rendering its reports to the Attorney General of the United States pursuant to paragraph VIII of said consent judgment, and this defendant made its determination of valuation and computed its permissible dividends in conformity with the long continued understanding, interpretation and construction of said judgment by all the parties thereto;"

*New funded debt financing was accomplished on this date.

234 and (B) specifically avers, in adopting Arapahoe's Sixth Defense, that three of this defendant's shipper-owners are and since prior to August 3, 1942, have been stockholders in Great Lakes Pipe Line Company; and

"The officers and directors of this defendant have at all times been familiar with the facts stated in said Sixth Defense and said order of August 3, 1942; that this defendant relied thereon in its computation of valuation used as earnings basis in its several reports to the Attorney General of the United States; and that, as to this defendant and its shipper-owners, said order is *res judicata*."

Respectfully submitted.

John J. Wilson,
JOHN J. WILSON,

Address: 815 15th Street, NW., Washington 5, D.C.

O. J. Dorwin,
O. J. DORWIN,
Edward H. Schlaudt,
EDWARD H. SCHLAUDT,

Address: 135 East 42nd Street, New York, New York.

Attorneys for defendant, Texas-New Mexico
Pipe Line Company.

Of Counsel:

WHITEFORD, HART, CARMODY & WILSON,

815 15 Street, NW.

Washington 5, D.C.

235 [Duly sworn to by Edward H. Schlaudt; jurat omitted in printing.]

236 In the United States District Court for the District of Columbia

[File endorsement omitted.]

[Title omitted.]

Statement of defendant Humble Pipe Line Company pursuant to stipulation of January 30, 1958

Filed February 13, 1958

The defendant Humble Pipe Line Company adopts as its own the Statement filed herein February 12, 1958, by certain defendants, entitled "Statement Pursuant to Stipulation of

January 30, 1958," and incorporates herein and submits its attached Statement dated February 13, 1958, entitled "Statement of the Defendant, Humble Pipe Line Company, Pursuant to the Stipulation of January 30, 1958," being this defendant's Statement of additive points of variance from the factual situation disclosed in the motion of the plaintiff United States of America and in the response of the defendant Arapahoe Pipe Line Company.

Joseph J. Smith, Jr.,

JOSEPH J. SMITH, Jr.,

810 Colorado Building, Washington 5, D.C.,

Attorney for Defendant Humble Pipe Line Company.

DATED FEBRUARY 13, 1958.

[Certificate of service omitted in printing.]

237 Statement of the defendant, Humble Pipe Line Company, pursuant to the stipulation of January 30, 1958

Filed February 13, 1958

Now comes the defendant, Humble Pipe Line Company, pursuant to the stipulation approved by the Court herein on January 30, 1958, and files this statement of additive points of variance from the factual situation disclosed in the motion of the plaintiff, United States of America, and in the response of the defendant, Arapahoe Pipe Line Company, and respectfully says:

FIRST

Since the entry of the original decree on December 23, 1941, there have been brought into existence newly organized pipe line common carriers not in any manner affected by the terms of the decree, as well as newly organized common carriers formed by shipper-owners or a combination of shipper-owners who are affected by the decree. These newly organized common carriers have financed their new lines with borrowed funds, and have placed in operation facilities of the most modern type. These new lines are, in all, or in nearly all instances, lines in excess of 16-inch diameter with electrically operated and controlled pumps. Lines of 16-inch diameter can transport more than twice the amount of oil, at the same or substantially the same cost, as can be transported by an 8-inch line.

SECOND

The lines of Humble are generally multiple small diameter lines, and to that extent constitute obsolete or antiquated equipment when compared with the more modern equipment of its competitors. The cost of operation, therefore, is comparatively greater than that of its competitors. Humble's competitors can, therefore, and do deliver oil to the Gulf Coast area of Texas at a lower cost (and in many cases at lower rates or tariffs) than can be done by Humble with the use of its present facilities, which conditions, if continued can result only in driving Humble from the competitive field of pipe line transportation.

THIRD

Only about 60% of the oil transported by Humble Pipe Line Company during the year 1957 was transported for its shipper-owner, Humble Oil & Refining Company, while approximately 40% was transported for shippers other than Humble Oil & Refining Company. Both Humble Oil & Refining Company and the other shippers of oil through Humble Pipe Line's system must meet competition from the shipper-owners whose more modern lines can transport such shipper-owner's products at a lesser cost than can be done by shipment through the present facilities of Humble Pipe Line Company, with the result that oil shipped by the competitors of Humble can be delivered to the Texas Gulf Coast at a lesser cost per barrel to the purchaser than that transported through the lines of Humble Pipe Line.

FOURTH

Unless Humble Pipe Line Company is in a position to finance modern improvements in its lines and system, it, eventually, will lose at least the income from all shippers other than Humble Oil & Refining Company (40% of its present business) in which event it cannot continue to operate its facilities except at a loss, and in such circumstance its shipper-owner Humble Oil & Refining Company will be driven to the use of transportation systems of its competitors and Humble Pipe Line Company will be driven from the field of competition as a common carrier pipe line in one of the most prolific oil producing areas of the nation. In order for Humble Pipe

Line Company to finance the improvement and modernization of its pipe line system it must borrow funds from third parties and unless the common carrier properties constructed with such borrowed funds can be included in its valuation under paragraph III(a) of said final judgment of December 23, 1941, it cannot make and consummate such loans with third parties.

Wherefore, this defendant prays that the motion of the plaintiff, United States of America, against the defendant, Arapahoe Pipe Line Company, be in all things denied and that the Court thereby determine that there is not a violation of said final judgment entered herein on December 23, 1941, in failing to deduct from the valuation of the common carrier property, before computing the shipper-owners' permissible dividend, the portion of the valuation financed by or attributable to loans from third parties.

Respectfully submitted.

NELSON JONES,
CHARLES E. SHAVER,
DILLARD BAKER,

P.O. Box 2180, Houston 1, Texas.

HOGAN & HARTSON,

Colorado Building, Washington 5, D.C.

By JOSEPH J. SMITH, Jr.

DATED FEBRUARY 13, 1958.

240 [Duly sworn to by W. S. Spangler; jurat omitted in printing.]

241 In United States District Court for the District of Columbia

[File endorsement omitted.]

[Title omitted.]

Answer of plaintiff, United States, to petition of Interstate Pipe Line Co. and Tuscarora Pipe Line Co., Ltd., for order to confirm rights under the judgment of December 23, 1941

Filed February 21, 1958

Comes now the plaintiff, United States, and in answer to the Petition of Interstate Pipe Line Co. and Tuscarora Pipe Line Co., Ltd. filed February 5, 1958, for an Order to Confirm

Rights under the Judgment of December 23, 1941, alleges as follows:

(1) Plaintiff admits the allegations of paragraphs 1, 2, 3, 4, 7 and 10.

(2) Plaintiff denies the allegations of paragraph 5 but admits that Interstate and Tuscarora have since 1942 filed annual reports with the Attorney General as required by Paragraph VIII of the Judgment of December 23, 1941. Plaintiff further admits that each of such reports indicated that the petitioners used as a basis for computing the amount of the permissible 7% payment to its shipper-owners its total valuation without deducting any indebtedness from the said valuation base.

(3) Plaintiff denies the allegations of paragraph 6 but admits that Interstate and Tuscarora have filed annual reports with the Attorney General for a period of 16 years and that the Attorney General has received such annual reports.

(4) Plaintiff denies the allegations of paragraph 8 but admits that a controversy now exists between the Government and some of the defendants to the Judgment of December 23, 1941, as to the meaning of Paragraphs III and VIII.

(5) Plaintiff avers that it has no knowledge or information sufficient to form a belief as to the allegations of paragraph 9.

(6) In further answer, Plaintiff alleges that Paragraph III of the Judgment prohibits the payment by any defendant carrier for any calendar year to its shipper-owners of anything of value in excess of 7% of the shipper-owners' share of such carrier's valuation, which share is only that proportion of the carrier's valuation that is the result of or attributable to the shipper-owner's investment in the carrier.

Wherefore, plaintiff respectfully prays the Court to enter an order denying the relief sought by the petitioners on the ground that the judgment clearly prohibits the computation and payment of dividends by the defendant carriers to their shipper-owners based on a valuation which includes that proportion of the carrier's valuation which is attributable to monies obtained from third parties.

Alfred Karsted,
ALFRED KARSTED,
Don M. Stichter,
DON M. STITCHER,

Attorneys, Department of Justice.

DATED FEBRUARY 21, 1958.

Acknowledgment of service (omitted in printing).

243

In the United States District Court for the
District of Columbia

[File endorsement omitted.]

[Title omitted.]

*Order directing plaintiff to serve all defendants with its
motion papers, etc.*

March 10, 1958

Defendants Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company, Limited, having moved to dismiss the motion of the plaintiff, United States of America, entitled "Motion for Order for Carrying Out Final Judgment" filed October 11, 1957 and praying relief against Arapahoe Pipe Line Company, and said defendants having filed with the Court their Petition for "Order to Confirm Rights Under the Judgment of December 23, 1941"; now after hearing counsel and upon due consideration, it is this 10th day of March, 1958,

Ordered that the motion of defendants Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company, Limited, to dismiss the motion of plaintiff for an "Order for Carrying Out Final Judgment" against Arapahoe Pipe Line Company be disposed of by ordering plaintiff, and plaintiff is hereby ordered forthwith to serve all defendants in this action with its motion papers on its said motion; and it is further

Ordered that the motion of plaintiff for an "Order for Carrying Out Final Judgment" against Arapahoe Pipe Line Company be consolidated for hearing with the petition of defendants Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company, Limited, for an "Order to Confirm Rights Under the Judgment of December 23, 1941" and that the motion and the petition are set down for argument on March 24, 1958.

R. B. Keech,

R. B. KEECH,

Judge.

Approved:

Alfred Karsted.

ALFRED KARSTED.

John J. Wilson.

JOHN J. WILSON.

Hugh H. Obear.

HUGH H. OBEAR.

244 In United States District Court for the District of
Columbia.

*Transcript of hearing March 24, 1958 (excerpt) statement by
the Court*

The COURT. Does anybody else want to say something?

I have heard all of you gentlemen fully, and I must say that none of you has abused the privilege accorded you. I should say also that each of you has been helpful to the Court in presenting it with briefs setting forth your respective positions and attempting to show justification for the positions taken.

I have, by virtue of the time heretofore afforded me and the fact that these various memoranda were not dumped on me simultaneously, been able to keep abreast of you through those documents.

I reach the conclusion, fortified by the arguments of today, that this decree is clear upon its face; and it being clear upon its face, I have no right to rewrite the agreement reached between the respective parties after due deliberation and approved by the Court in 1941 and again in 1942 by the supplemental order.

I do not treat the proceedings before me as asking for abandonment of the decree in toto. Actually, if I were
245 required to act upon such a request, I would not hold that the decree as it has been interpreted by the parties over a period of sixteen years violates the Elkins Act. There has been no adjudication of the violations alleged in the original complaint herein. The consent decree was the vehicle by which the two sides attempted to ride out a situation where issues had been joined but never determined.

I have stated to you that I find no ambiguity in the terminology of the decree. I think it is clear upon its face; but even if there had been ambiguity I certainly would be constrained to hold that ambiguity had been resolved through the practice of the defendants, acquiesced in by the Government after full disclosure, throughout the sixteen years.

I have before me at the present time, I believe, three motions dealing with this aspect of the case. I think—with due respect to Judge Peck—there is a fourth one, which is in his motion. The other motion, I believe the record has been cleared of. That was the rule to show cause.

Three motions of Government denied

As to these three motions of the Government, I will deny them. From that action by the Court, it follows that I hold that the interpretation of the decree which Judge Peck requested in the Interstate and Tuscarora motion is the correct interpretation.

Unless there is something further from either side, I will take an order to that effect.

246 Mr. KARSTED. Does that include the other motions, the Tidal motion, regarding owned and used property which we were going to argue after we had argued the Arapahoe?

The COURT. I didn't intend to do that, sir. I felt we were dealing with the three motions, plus the motion of Judge Peck. I will certainly be glad to hear you as to the Tidal certainly as to any refinements of the motion.

Mr. KARSTED. As I suggested here this morning, we had three matters before the Court, and we were going to argue the first matter, which is the one we have just finished.

The COURT. I will be delighted to hear you now.

Mr. KARSTED. The second matter involves the action against Tidal, which is a different point than the seven percent dividend on leased property, and the third action was one against Standard Oil, which involved yet another point. They are both minor points.

The COURT. You are certainly entitled to be heard on that. That is why I asked you was there anything further.

Mr. KARSTED. I see, your Honor. I thought you meant anything more on that point.

The COURT. I can understand in the light of your premise why that would be true, sir.

250 In the United States District Court
for the District of Columbia

[File endorsement omitted.]

Civil Action No. 14060

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

Order

March 25, 1958

Plaintiff having moved on October 11, 1957, for an order directing Arapahoe Pipe Line Company to carry out the judgment herein entered December 23, 1941, and the Court having entered an Order herein March 10, 1958 directing plaintiff to serve its motion upon all defendants in this action, and defendants Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company, Limited, having filed on February 5, 1958, their petition for "Order to Confirm Rights Under the Judgment of December 23, 1941", both the motion and the petition presenting the same question of construction of the judgment of December 23, 1941; now

Upon the final judgment entered on consent December 23, 1941, the order entered on consent on August 3, 1942, on the petition of Great Lakes Pipe Line Company, the motion of plaintiff entitled "Motion for Order for Carrying Out Final Judgment" against Arapahoe Pipe Line Company filed October 11, 1957, the verified response of Arapahoe Pipe Line Company filed January 20, 1958, the verified statement of additive facts and prayer for relief of the defendants Magnolia Pipe Line Company, The Texas Pipe Line Company, Plantation Pipe Line Company, Shell Pipe Line Corporation, Sinclair Pipe Line Company, Service Pipe Line Company, Great Lakes Pipe Line Company, Cities Service Pipe Line Company, Texaco-Cities Service Pipe Line Company, Texas-New Mexico Pipe
251 Line Company, Continental Pipe Line Company and Humble Pipe Line Company filed February 12 and 13, 1958, pursuant to the stipulation of January 30, 1958 approved and so ordered by the Court, the petition of Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company, Limited,

for an "Order to Confirm Rights Under the Judgment of December 23, 1941" filed February 5, 1958, and the answer of plaintiff to said petition dated February 21, 1958; and

After hearing counsel for all parties herein desiring to be heard upon the foregoing record, and there being no disputed questions of fact, and the Court upon due consideration having rendered its opinion at the conclusion of the hearing on March 24, 1958, it is this 25th day of March, 1958

Ordered that plaintiff's motion for an "Order for Carrying Out Final Judgment" against Arapahoe Pipe Line Company be and the same hereby is in all respects denied; and it is further

Ordered that the prayer for relief contained in the Statement Pursuant to Stipulation of January 30, 1958 and the petition of defendants Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company, Limited, be and the same hereby are granted; and it is further

Ordered that the valuation of common carrier's property on which the shipper-owner's permissible dividends may be computed is the valuation of the carrier's property as provided in the judgment entered December 23, 1941 without deducting the amount of any indebtedness from such valuation; and it is further

Ordered that defendant common carriers are permitted to pay dividends to their respective shipper-owners on the basis of such computation.

R. B. KEECH,
Judge.

LIBRARY
SUPREME COURT. U. S.

VOLUME III

**"SERVICE PIPE LINE COMPANY, ET AL
PROCEEDINGS"**

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 210

UNITED STATES OF AMERICA, APPELLANT

VS.

THE ATLANTIC REFINING COMPANY, ET AL.

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

FILED JULY 28, 1958

PROBABLE JURISDICTION NOTED OCTOBER 13, 1958

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 210

UNITED STATES OF AMERICA, APPELLANT

vs.

THE ATLANTIC REFINING COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

CLERK'S NOTE

Pursuant to stipulation of counsel, this record is being printed in four volumes.

Volume I designated "General" contains:

Original complaint

Final judgement (Consent Decree)

Notice of appeal

Order of this Court noting probable jurisdiction

Volume II designated "Arapahoe Pipe Line Company, et al. or 7% Proceedings."

Volume III designated "Service Pipe Line Company, et al. Proceedings."

Volume IV designated "Tidal Pipe Line Company, et al. Proceedings."

INDEX

	Original	Print
Record from the U.S.D.C. for the District of Columbia		1
Complaint	3	2
Final judgment (Consent Decree)	12	9
Notice of appeal	25	20
Order noting probable jurisdiction	30	22
Record from the U.S.D.C. for the District of Columbia	31	23
Motion for order for carrying out final judgment	31	23
Exhibit C—Letter from Arapahoe Pipe Line Company to The Attorney General, dated April 15, 1953	37	29

Record from the U.S.D.C. etc.—Continued

Motion for order etc.—Continued

	Original	Print
Exhibit D—Letter from Arapahoe Pipe Line Company to Assistant Attorney General, dated April 11, 1957	38	30
Exhibit E—Letter from Arapahoe Pipe Line Company to The Attorney General, dated April 13, 1956	39	31
Arapahoe Pipe Line Company—Report to the Attorney General of the United States for the Calendar Year, 1956	40	32
Response of respondent Arapahoe Pipe Line Company in opposition to motion for order for carrying out final judgment	43	33
Exhibits:		
No. 1—Throughput Agreement between The Pure Oil Company, Sinclair Crude Oil Company and Arapahoe Pipe Line Company, dated July 15, 1954	73	52
No. 2—Mortgage and Deed of Trust between Arapahoe Pipe Line Company and The Chase National Bank of the City of New York, dated August 1, 1954	78	60
No. 3—Tentative valuation report and appendices on the Arapahoe Pipe Line Company as of December 31, 1955 with transmittal letter from F.C.C. Secretary, Harold D. McCoy, dated August 5, 1957	82	64
Interrogatories of plaintiff propounded to defendant, Arapahoe Pipe Line Company	106	86
Answers of defendant	108	87
Exhibit A-1—Arapahoe Pipe Line Company 2. Crude Oil Shipped over the Arapahoe Trunk System during years of existence, 1954 thru 1957	110	88
Exhibit A-2—Arapahoe Pipe Line Company 2. Crude Oil Gathered by Arapahoe Gathering System during years of existence, 1956 and 1957	111	89
Exhibit B—Arapahoe Pipe Line Company 3. Shipping Capacities of the Arapahoe Trunk System during years of existence 1954 thru 1957	112	89
Exhibit C—Arapahoe Pipe Line Company 4. Amount of tariff received for transportation by Trunk Line and Gathering Systems during years of existence 1954 thru 1957	113	90
Stipulation naming parties in interest, filed January 30, 1958	114	90
Petition of Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company for order to confirm rights under the judgment of December 23, 1941	116	92
Motion of Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company to dismiss government's motion and for further relief	121	95
Affidavit of Arthur H. Dean	126	97

INDEX

III

Record from the U.S.D.C. etc.—Continued	Original	Print
Statement pursuant to stipulation of January 30, 1958.....	134	103
Answer and statement of defendant, Maguolia Pipe Line Company.....	139	107
Statement of Plantation Pipe Line Company in opposition to plaintiff's motion directed against Arapahoe Pipe Line Company.....	146	111
Exhibits:		
No. 1 and attachment—Letter from C. R. Younts, President to The Attorney General, dated April 14, 1943 and Report of Plantation Pipe Line Company, dated April 14, 1943.....	151	114
No. 2—Letter from Tom C. Clark, Assistant Attorney General to S. V. Kane, dated April 22, 1943.....	152	115
No. 3—Letter from C. R. Younts, by S. V. Kane to Tom C. Clark, dated May 14, 1943.....	153	116
No. 4 and attachment—Letter from S. V. Kane to Tom C. Clark, Attorney General, dated April 12, 1949 and Report of Plantation Pipe Line Company, dated April 12, 1949.....	154	117
No. 5—Letter from Wendell Berge, Assistant Attorney General to S. V. Kane, dated June 23, 1944.....	156	119
No. 6—Letter from Plantation Pipe Line Company to Wendell Berge, Assistant Attorney General, dated July 17, 1944.....	157	119
No. 7—Letter from George Koegler to H. Graham Morrison, Assistant Attorney General, dated June 11, 1951.....	158	120
No. 8—Letter from Newell A. Clapp to George Koegler, Standard Oil Company (N.J.) dated July 5, 1951.....	160	122
No. 9—Letter from George Koegler to Newell A. Clapp dated July 9, 1951.....	161	123
No. 10—Letter from Newell A. Clapp to George Koegler dated July 13, 1951.....	162	124
Statement of the defendant, Great Lakes Pipe Line Company pursuant to stipulation of January 30, 1958.....	163	125
Attachments 1, 2, 3, and 4—Correspondence between the Attorney General's office and R. A. Kroenert, dated May 29, 1943; June 24, 1943; August 23, 1943. and August 30, 1943.....	168	129
Petition of defendant, Great Lakes Pipe Line Company for order declaring plan set forth in petition is not in violation of the judgment, etc.....	176	135
Affidavit of James J. Cosgrove.....	183	140
Order dispensing with service of copy of petition on certain defendants.....	185	142
Order that plan set forth in petition is not a violation of said judgment.....	187	143

Record from the U.S.D.C. etc.—Continued

Original Print

Statement of Shell Pipe Line Corporation in opposition to plaintiff's motion directed against Arapahoe Pipe Line Company.....	189	143
Factual Statement of Sinclair Pipe Line Company successor to defendant Sinclair Refining Company in opposition to motion of United States v. Arapahoe Pipe Line Company for order carrying out final judgment.....	192	147
Exhibits:		
No. 1—Letter from Consolidated Oil Corporation to Thurman W. Arnold dated November 16, 1942.....	208	155
No. 2—Letter from Thurman Arnold to Consolidated Oil Corporation, dated November 17, 1942.....	211	157
No. 3—Letter from Sinclair Pipe Line Company to The Attorney General, dated April 12, 1955.....	214	158
Exhibit A—Sinclair Pipe Line Company—I.C.C.'s final value as of December 31, 1947, etc.....	216	161
Exhibit A-1—Valuation Report for Pipe Line property of Sinclair Pipe Line Company as of December 31, 1953.....	218	162
Exhibit No. 4—Letter from Stanley N. Barnes, Assistant Attorney General, to William H. Morris, dated April 28, 1955.....	220	163
Exhibit No. 5—Letter from R. C. Bearden to Stanley N. Barnes, dated May 18, 1955.....	222	164
Statement of defendant, The Texas Pipe Line Company relating to motion of plaintiff with respect to Arapahoe Pipe Line Company, filed pursuant to stipulation and order of January 30, 1958.....	224	166
Statement of defendant, Texaco-Cities Service Pipe Line Company (formerly named The Texas-Empire Pipe Line Company) relating to motion of plaintiff with respect to Arapahoe Pipe Line Company filed pursuant to stipulation and order on January 30, 1958.....	228	168
Statement of defendant, Texas-New Mexico Pipe Line Company, relating to motion of plaintiff with respect to Arapahoe Pipe Line Company, filed pursuant to stipulation and order of January 30, 1958.....	232	170
Statement of defendant Humble Pipe Line Company pursuant to stipulation of January 30, 1958.....	236	172
Answer of plaintiff, United States, to petition of Interstate Pipe Line Co. and Tuscarora Pipe Line Co., Ltd. for order to confirm rights under the judgment of December 23, 1941.....	241	175

INDEX

V

Record from the U.S.D.C. etc.—Continued

Original Print

Order directing plaintiff to serve all defendants with its motion papers addressed to Arapahoe and consolidating petition of Interstate and Tuscarora for hearing with and motion on March 24, 1958.....	243	177
Transcript of hearing of March 24, 1958 (Excerpt from) Statement by the court.....	244	178
Three motions of government denied.....	245	179
Order denying plaintiff's motion for an order for carrying out final judgment against Arapahoe Pipe Line Company, etc.....	250	180
Motion for order carrying out the final judgment entered on December 23, 1941.....	252	183
Exhibit C—Transmittal letter from Service Pipe Line Company to The Attorney General, dated December 1, 1953.....	258	188
Service Pipe Line Company—Amended Report to the Attorney General of the United States for the Calendar Year 1952.....	259	189
Exhibit D—Transmittal letter from Service Pipe Line Company to The Attorney General, dated April 6, 1956.....	260	190
Service Pipe Line Company—Report to the Attorney General of the United States for the Calendar Year 1955.....	261	191
Opposition of Service Pipe Line Company and Standard Oil Company (Indiana) to motion for order for carrying out final judgment.....	263	193
Transcript of hearing of March 25, 1958 (Excerpt from) Ruling of the Court.....	277	201
Order denying motion for an order to carry out the final judgment entered on December 31, 1941.....	278	202
Motion for order for carrying out the final judgment entered December 31, 1941.....	279	203
Exhibit C—Transmittal letter from Tidal Pipe Line Company to Attorney General, dated September 23, 1950.....	289	211
Revised reports made on behalf of Tidal Pipe Line Company for the calendar years 1942 through 1948 inclusive.....	290	212
Exhibit D—Transmittal letter from Tidal Pipe Line Company to Attorney General, dated September 10, 1953.....	305	226
Revised reports made on behalf of Tidal Pipe Line Company for the calendar years 1949 through 1952 inclusive.....	306	227
Exhibit E—Transmittal letter from Tidal Pipe Line Company to Attorney General dated September 27, 1954.....	315	234

Record from the U.S.D.C., etc.—Continued

Original Print

Motion for order, etc.—Continued

Exhibit E—Continued

Revised report made on behalf of Tidal Pipe Line Company for the year 1953.....	316	235
Response of Tidal Pipe Line Company and Tidewater Oil Company to plaintiff's motion for order for carrying out the final judgment entered January 23, 1941.....	317	236
Exhibits:		
A to F—Tidal Pipe Line Company annual reports to the Attorney General for the calendar years 1944 through 1953 inclusive.....	330	245
G—Letter from Stanley M. Barnes, Assistant Attorney General to Mr. Y. P. Broome, Secretary, Tidal Pipe Line Company, dated March 10, 1953 (?) 54.....	342	255
H—Letter from Tidal Pipe Line Company by Y. P. Broome to Stanley M. Barnes, dated April 8, 1954.....	343	255
I—Letter from Stanley M. Barnes to Y. P. Broome, Tidal Pipe Line Company, dated September 19, 1955.....	345	257
J—Letter from Tidal Pipe Line Company to Stanley M. Barnes, dated October 20, 1955.....	346	257
K—Telegram from Victor R. Hanson, Asst. Attorney General to Lloyd Armstrong, Tidal Pipe Line Company.....	347	258
L—Telegram from Lloyd Armstrong, Tidal Pipe Line Company to Victor R. Hanson.....	348	259
Appendix.....	352	259
Tidal's original 1943 report to Attorney General.....	353	259
Letter from Wendell Berge to Y. P. Broome, Tidal Pipe Line Company, dated April 22, 1944.....	353	259
Letter from Tidal Pipe Line Company to Attorney General, dated April 6, 1944.....	354	260
Tidal Pipe Line Company—Valuation used as earnings basis, December 31, 1942.....	355	261
Tidal's original 1944 report to Attorney General.....	356	261
Acknowledging Letter from Wendell Berge to Y. P. Broome, Tidal Pipe Line Company, dated April 25, 1945.....	356	262
Letter from Tidal Pipe Line Company to Attorney General dated April 19, 1945.....	357	263
Tidal Pipe Line Company—Valuation used as earnings basis as of December 31, 1943.....	358	264
Tidal's revised 1943 report to Attorney General.....	359	266
Letter from Y. P. Broome to Attorney General, dated September 25, 1950.....	359	266
Tidal Pipe Line Company—Estimated Valuation of properties as of December 31, 1942 at 1947 period prices.....	360	267

Record from the U.S.D.C., etc.—Continued

Appendix—Continued

	Original	Print
Tidal's revised 1944 report to Attorney General	361	267
Letter from Y. P. Broome to Attorney General, dated September 25, 1950	361	267
Tidal Pipe Line Company—Estimated Valuation of PROPERTIES as of December 31, 1943 at 1947 period prices	362	269
Tidal's revised 1945 report to Attorney General:		
Letter from Y. P. Broome to Attorney General, dated September 25, 1950	363	269
Tidal Pipe Line Company—Estimated valuation of properties as of December 31, 1944 at 1947 period prices	364	271
Tidal's revised 1946 report to Attorney General	365	271
Letter from Y. P. Broome to Attorney General, dated September 25, 1950	365	271
Tidal Pipe Line Company—Estimated Valuation of properties as of December 31, 1945 at 1947 period prices	366	273
Tidal's revised 1947 report to Attorney General:		
Letter from Y. P. Broome to Attorney General, dated September 25, 1950	367	273
Tidal Pipe Line Company—Estimated Valuation of Properties as of December 31, 1946 at 1947 period prices	368	275
Transcript of hearing of March 25, 1958 (Excerpt from)	370	275
Ruling of the Court	370	275
Order denying motion for an order directing Tidal Pipe Line Company to carry out the judgment entered December 23, 1941, etc.	372	276

252 — In the United States District Court for the District of
Columbia

[File endorsement omitted.]

Civil Action No. 14060

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

*Motion for order carrying out the final judgment entered in the
above cause on December 23, 1941*

Filed October 11, 1957

The United States of America, by its attorneys, moves this Court for an order directing the defendant Service Pipe Line Company to carry out the judgment entered in the above cause on December 23, 1941 and for such relief against the defendant Standard Oil Company (Indiana) as the Court deems appropriate and proper under the circumstances. Movant represents to the Court as follows:

1. The complaint in this cause was filed in this Court by the United States of America, acting through its Attorney General, on December 23, 1941. The complaint, a copy of which is attached hereto and marked Exhibit A, charged the defendants, consisting of 53 common carrier pipe line companies and their 36 shipper-owners with violation of Section 1(1) of the "Elkins Act", as amended, 34 Stat. 587-9, U.S.C., Title 49, Section 41; by the giving and receiving of illegal rebates under the guise of dividends and earnings.

2. On December 23, 1941; the Court, by consent of the parties entered a Final Judgment in this action (hereinafter referred to as the "Judgment"), a copy of which Final Judgment is attached hereto and marked Exhibit B.

253 3. Under the provisions of paragraph X of said Judgment, the Court retained jurisdiction for the purpose of enabling any of the parties to the Judgment to apply to the Court at any time for such orders and directions as may be

necessary or appropriate in relation to the carrying out of the Judgment or for the enforcement of compliance therewith.

4. The defendant Standard Oil Company (Indiana), which is a defendant shipper-owner in this cause and a party to the said Final Judgment, has at all times since the entry of the Judgment controlled the defendant Stanolind Pipe Line Company (which in 1950 changed its name to Service Pipe Line Company) and which is hereinafter sometimes referred to as Service) through ownership of the outstanding capital stock (except directors' shares) of Service, which is a defendant common carrier in this cause and likewise a party to the said Final Judgment.

5. In regard to the amount of the dividends which the defendant common carrier can credit or pay to its defendant shipper-owner in any calendar year, paragraph III of the said Final Judgment provides as follows:

"No defendant common carrier shall credit, give, grant, or pay, directly or indirectly, through or by any means or device whatsoever, to any shipper-owner in any calendar year, commencing as of January 1, 1942, any earnings, dividends, sums of money or other valuable considerations derived from transportation or other common carrier services which in the aggregate is in excess of its share of seven per centum (7%) of the valuation of such common carrier's property, if such common carrier shall have transported during said calendar year any crude oil, or gasoline, or other petroleum products for said shipper-owner, but shall be permitted (insofar as the Interstate Commerce and Elkins Acts are concerned) to credit, give, grant or pay said per centum."

6. The valuation upon which the permissible dividend to the shipper-owner for each calendar year is calculated is limited, by paragraph III (a) of said Final Judgment, to the latest final valuation of property owned and used by the carrier for 254 common carrier purposes as made by the Interstate Commerce Commission and the amounts which are permitted by said paragraph III (a) to be added to or deducted from the said latest final valuation must be computed by the carrier as of the close of the year next preceding the said calendar year for which the said permissible dividend is calculated, paragraph III (a) providing as follows:

"Valuation as hereinabove used shall mean the latest final valuation of each common carrier's property owned and used

for common carrier purposes as made by the Interstate Commerce Commission. To the latest final valuation of the Commission shall be added the value of additions and betterments to the common carrier property made after the date of such latest final valuation, and from this sum shall be deducted appropriate amounts for physical depreciation on, and retirements of, common carrier property, computed by the carrier as of the close of the next preceding year, in accordance with the methods used by the Interstate Commerce Commission in bringing valuations down to date, the classifications of property to conform to the uniform system of accounts for pipelines prescribed by the Interstate Commerce Commission. Such valuation shall not include the value of the common carrier facilities acquired through the investment of excess earnings transferred to and withdrawn from the surplus account as provided in paragraph V hereof."

7. Paragraph III(d) of said judgment provides that:

"Any amounts permitted to be credited, granted, paid or given during any calendar year as hereinbefore provided, if not earned, may be credited, granted, paid or given within any one or more of the next succeeding three years, in addition to credits and payments permitted during each such subsequent year."

8. The defendant shipper-owner is prohibited from accepting any sums of money which the carrier is prohibited by the provisions of paragraph III from paying, paragraph IV providing as follows:

"No shipper-owner shall solicit, accept or receive directly or indirectly, through or by any means or device whatsoever, from any defendant common carrier any sums of money or other valuable considerations which said defendant common carrier is prohibited from granting, crediting, paying, or giving by the provisions of paragraph III hereof."

9. The defendant carrier was directed to render annual reports to the Attorney General by paragraph VIII of the said Final Judgment which provides as follows:

"Each defendant common carrier shall render a report to the Attorney General of the United States not later than the 15th day of April of each year, showing for the preceding
255 calendar year: the valuation used as earnings basis; total earnings available for distribution to owners or stockholders; earnings, dividends, payments or benefits credited,

paid, granted or given to all stockholders or owners; and amounts of money transferred to or withdrawn from the surplus retained pursuant to paragraph V hereof."

10. From the date of the entry of the Judgment up to and through April 10, 1950, the defendant Service in its annual reports to the Attorney General regularly calculated the permissible dividend for its shipper-owner on the basis of the carrier's valuation as of the close of the next preceding year as required by the Judgment. On August 21, 1950 the defendant Service submitted eight amended reports for the calendar years 1942 through 1949 which the Department refused to accept and the amended reports were withdrawn. On March 8, 1951 the company submitted eight second amended reports for the calendar years 1942 through 1949. The second amended report for the calendar year 1948 disclosed that the company was adding to its valuation, on the basis of which it computed the shipper-owner's permissible dividend, the pro-rata value of additions and betterments and was deducting the pro-rata value of depreciation and retirements occurring after the close of the next preceding year for which the report was made. The Government called this violation to the company's attention. However, thereafter in its annual reports the company persisted in adding the pro-rata value of additions and betterments and subtracting the pro-rata value of depreciation and retirements occurring after the close of the next preceding year for which each report was made. The company has persisted in following this practice from 1951 to the present time despite the fact that the Government has repeatedly called this violation to the company's attention and as a result of this practice the defendant Service has wrongly calculated the permissible dividend for its shipper-owner throughout this period and more especially and by way of example as follows.

256 11. On December 1, 1953 the defendant Service Pipe Line Company submitted a revised annual report to the Attorney General for the calendar year 1952 (a copy of which is attached hereto and marked Exhibit C). In this report the defendant Service, in violation of paragraphs III and III(a), computed the permissible 7% dividend for its shipper-owner on the basis of the valuation of its property owned and used for common carrier purposes as of December 31, 1951, as found by the Interstate Commerce Commission (Valuation Docket No. 1302 [1951 Report] 53 I.C.C. Valuation Report

761), after erroneously adding to such valuation the value of additions and betterments to common carrier property made after the date of such latest final valuation and after erroneously deducting from such valuation deductions for physical depreciation and retirements occurring after the date of such latest final valuation, and defendant Service reported as its permissible 7% dividend for its shipper-owner an amount \$241,040 in excess of the amount permitted by paragraph III of the judgment.

Defendant Service also reported in Exhibit C that its earnings from transportation and other common carrier services for the calendar year 1952 fell \$1,063,238 short of the reported permissible 7% dividend and it reported this amount as "earnings less than seven percent of valuation carried forward for next succeeding three years as provided in sub-paragraph III(d)".

Three years later in its annual report to the Attorney General for the calendar year 1955 (a copy of which is attached hereto and marked Exhibit D), submitted April 6, 1956, the defendant Service reported that its earnings for the calendar year 1953 exceeded the reported permissible 7% dividend for its shipper-owner and it reported that it used a part of this excess to pay to its shipper-owner the amount of the unearned reported dividend for the year 1952. However, the total amount thus paid to the shipper-owner, Standard Oil Co. (Indiana), as a dividend for the calendar year 1952 was \$241,040 in excess of the amount of the dividend permitted for the calendar year 1952, as set forth above.

257 Wherefore, the Government requests this Court to issue an order carrying out the Final Judgment by directing the defendant Service Pipe Line Company henceforth to compute its shipper-owner's permissible dividend each year on the basis of the valuation as of the preceding year of the property of Service Pipe Line Company owned and used for common carrier purposes, as provided in paragraph III of the Final Judgment and for such relief against the defendant Standard Oil Company (Indiana) as the Court may deem just and proper under the circumstances.

ALFRED KAESTED,
Attorney, Department of Justice.

Exhibit C to Motion

SERVICE PIPE LINE COMPANY,
SERVICE PIPE LINE BUILDING,
Tulsa 2, Oklahoma, December 1, 1953.

Air Mail

The Honorable The ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

DEAR SIR: Under the provisions of the final judgment in the case of United States of America vs. The Atlantic Refining Company, et al, Civil Action No. 14060, District Court of the United States for the District of Columbia, dated December 23, 1941, and known as the Pipe Line or Elkins Act Decree, this company is obliged, among other things, to limit payment of dividends to shipper-owner and also to report to The Attorney General of the United States, on or before April 15, of each year, certain information with respect to the valuation of its properties, as used by it in applying its dividend limitation and its retained or frozen surplus; if any.

We have heretofore filed with you a timely report as required by The Decree for the year 1952.

The Interstate Commerce Commission recently has fixed a new final valuation at December 31, 1951. Such action by the Commission makes it necessary to amend the 1952 report now on file to reflect the latest final valuation as found by the Commission.

We have, therefore, prepared and transmit herewith amended report for the year 1952.

Acknowledgment would be appreciated.

Yours truly,

SERVICE PIPE LINE COMPANY,
By J. L. Burke, *President*.

Enclosure: cc: Mr. G. W. Laird, Interstate Commerce Commission, Washington 25, D.C.

259

Attachment to Exhibit C

SERVICE PIPE LINE COMPANY

Amended report to the Attorney General of the United States for the
calendar year 1952

(Civil Action #14060)

Line

No.

1. Latest Final Valuation made by the I.C.C.	\$167,550,000
2. Add: Value of additions and betterments to common carrier property made after date of such latest final valuation, valued for the year in which completed.	3,625,718

3. Sum of above items	171,175,718
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4. Less: Appropriate deductions for physical depreciation and retirements	182,202
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5. Total Valuation	170,993,426
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6. Less: Value of common carrier facilities acquired through investment of excess earnings	353,067
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7. Valuation used as earnings basis	170,640,359
-------------------------------------	-------------

8. Seven percent of that valuation	11,944,825
------------------------------------	------------

9. Earnings derived from transportation and other common carrier services: Line 45, Schedule No. 302, Annual Report Form P—\$11,357,982.	
--	--

Surplus Adjustments:

Add: Deduct:

Schedule Line
No. No.

360	1	Credits from Retired Carrier Property	\$459	
360	7	Miscellaneous Credits	18,063	
360	12	Debits from Retired Carrier Property	4,228	
360	16	Miscellaneous Debits	490,689	476,395

Total earnings available for distribution to stockholders	10,891,587
---	------------

10. Earnings less than seven percent of valuation carried forward for next succeeding three years as provided in sub-paragraph III(d) (Line 8 Less Line 9)	1,063,238
--	-----------

11. Payments to all stockholders	10,280,378
----------------------------------	------------

12. Earned and permitted to be paid this year but withheld; payment permitted at any time hereafter in accordance with sub-paragraph III(c) (Line 9 Less Line 11)	601,209
---	---------

Exhibit D to motion

SERVICE PIPE LINE COMPANY,
SERVICE PIPE LINE BUILDING,
Tulsa 2, Oklahoma, April 6, 1956.

The Honorable, the ATTORNEY GENERAL OF THE UNITED
STATES,
Washington 25, D.C.

DEAR SIR: Under the provisions of the final judgment in the case of United States of America vs. The Atlantic Refining Company, et al, Civil Action No. 14060, District Court of the United States for the District of Columbia, dated December 23, 1941, and known as the Pipe Line or Elkins Act Decree, this company is obliged, among other things, to limit payment of dividends to shipper-owners and also to report to The Attorney General of the United States, on or before April 15, of each year, certain information with respect to the valuation of its properties, as used by it in applying its dividend limitation and its retained or frozen surplus, if any.

Therefore, we submit herewith a report containing the information which Service Pipe Line Company is obliged to file with you in compliance with said judgment.

Acknowledgment would be appreciated.

Yours truly,

SERVICE PIPE LINE COMPANY,
By J. L. Burke, President.

Enclosure: cc: Harold D. McCoy, Secretary, Interstate Commerce Commission, Washington 25, D.C.

261

Attachment to Exhibit D

SERVICE PIPE LINE COMPANY

Report to the Attorney General of the United States for the calendar year 1955

(Civil Action No. 14060)

Line No.			
1.	Latest final valuation made		\$202,606,900
2.	Add: Value of additions and betterments to common carrier property made after date of such latest final valuation, valued for the year in which completed.		None
3.	Sum of the above items		202,606,900
4.	Less: Appropriate deductions for physical depreciation and retirements		14,364,000
5.	Total valuation		188,242,900
6.	Less: Value of common carrier facilities acquired through investment of excess earnings		353,067
7.	Valuation used as earnings basis		187,889,833
8.	Seven percent of that valuation		13,152,288
9.	Earnings derived from transportation and other common carrier services: Line 45, Schedule No. 302, Annual Report Form P		14,562,002
Surplus Adjustments:			
Add:		Deduct:	
Schedule No.	Line No.		
360	5	Debits from retired carrier property	\$1,690
360	9	Miscellaneous debits	38,474
360	1	Miscellaneous credits	151
			40,013
Total 1955 Earnings available for distribution to stockholders			14,521,989
10.	Earnings less than seven percent of valuation this year carried forward for next succeeding three years as provided in subparagraph III(d) (Line 8 Less Line 9)		None

192 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

Report to the Attorney General of the United States for the calendar year 1955—Continued.

Line
No.

11. Payments to all stockholders:

(a) From 1955 earnings:

(1) Within 7% of

above

valuation ----- \$12,256,878

(2) Earnings less

than 7% of

valuation in

prior years

carried

forward for

next succeeding

three years as

provided in

subparagraph

III(d):

1952 ----- 1,063,238

1953 (see

note) --- 306,463

\$13,626,579

(b) From 1954 earnings—permitted to

be paid in that year but withheld;

payment permitted at any

time thereafter in accordance

with subparagraph III(c) ----- 1,932,472

Total payments to all stockholders -----

15,559,051

12. Earned and permitted to be paid this year but withheld;

payment permitted at any time hereafter in ac-

cordance with subparagraph III(c) (Line 8 less Line

11(a)(1)) -----

895,410

NOTE.—In addition to this payment (\$306,463) there is \$1,387,276 of earnings less than seven percent in 1953 which is still carried forward under the provisions of subparagraph III(d).

263 In the United States District Court
for the District of Columbia

[File endorsement omitted.]

Civil Action No. 14060

UNITED STATES OF AMERICA, PLAINTIFF

vs.

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

Opposition of Service Pipe Line Company and Standard Oil Company (Indiana) to motion for order for carrying out final judgment

Filed January 20, 1958

A. The Motion For Order For Carrying Out Final Judgment concerns valuation methods employed by Service Pipe Line Company in connection with the annual reports made by it to the Attorney General under Paragraph VIII of the Judgment. Paragraph III of the Judgment limits dividend payments by a pipeline company to a shipper-owner to seven per cent of the valuation of the carrier's property. Valuation is defined in Paragraph III(a) as follows:

"Valuation as hereinabove used shall mean the latest final valuation of each common carrier's property owned and used for common carrier purposes as made by the Interstate Commerce Commission. To the latest final valuation of the commission shall be added the value of additions and betterments to the common carrier property made after the date of such latest final valuation, and from this sum shall be deducted appropriate amounts for physical depreciation on and retirements of, common carrier property, computed by the carrier as of the close of the next preceding year, in accordance with the methods used by the Interstate Commerce Commission in bringing valuations down to date. * * *

264 B. Pursuant to Paragraph III(a) Service has regularly added to the latest final valuation of the Interstate Commerce Commission the value of subsequent additions and betterments, including those completed during the year for which the report to the Attorney General was made. It has computed the value of the latter as of the close of the preceding year and in so doing has utilized I.C.C. period price indices (rather than actual costs) in accordance with methods

used by the Interstate Commerce Commission, all as required by Paragraph III(a). Likewise, Service has deducted from valuation "appropriate amounts" for retirements, including those effected during the year for which the report to the Attorney General was made, valued, however, as of the close of the preceding year. The value of additions and betterments completed during the year has been prorated by Service on the basis of the number of months in the year that such additions were in use and contributed to earnings. The value of retirements was in each instance similarly prorated to reflect the portion of the year that the retired properties were withdrawn from service and no longer contributed to earnings. It is this prorata valuation that the Motion challenges.

C. Service and Standard Oil Company (Indiana), its shipper-owner, oppose the aforesaid Motion and aver that:

1. Service's pro-rata valuation of additions and betterments, and retirements, is strictly in accordance with the plain meaning and intent of Paragraph III(a) and the Judgment as a whole.

265 2. In any event, no payment of any dividends by Service to Standard in any year was attributable to the inclusion of pro-rata values in total valuation.

3. With reference to the particular years brought into question in the Motion (1952 and 1955), use of pro-rata values substantially *reduced* the amount of permissible dividend payments by Service to Standard.

D. For the purpose of facilitating the disposition of the Motion, Service and Standard admit (but only for the purposes of the Motion) the allegations of paragraphs 1 to 9, inclusive, of the Motion.

E. With respect to the allegations of paragraph 10 of the Motion, Service and Standard represent the facts to be as follows:

1. From the date of the entry of the Judgment down to date (and not merely to April 10, 1950), Service in its annual reports to the Attorney General has regularly calculated the permissible dividend payable to its shipper-owner on the basis of its valuation "as of the close of the next preceding year," as required by Paragraph III(a) of the Judgment.

2. On August 21, 1950, Service submitted amended reports for the calendar years 1942 through 1949. The Department of Justice did not, as alleged, refuse to accept these reports,

but Service subsequently (on March 8, 1951) filed second amended reports for such years for reasons in no way concerned with the matters complained of in the present Motion.

266 3. In a memorandum submitted by Service to the Department of Justice on August 21, 1950, accompanying its amended reports for the years 1942 to 1949, and in oral conferences with the Department, Service explained fully to the Department the manner in which it applied the pro-rata value of additions and betterments and deducted appropriate amounts for retirements of common carrier property. Although the Department, in a letter to Service dated September 14, 1950, commented on other aspects of the construction of the Judgment by Service, the Department raised no question with respect to the matter of pro-rata valuation. Service accordingly continued to value on a pro-rata basis additions and betterments, and retirements, applicable to the year for which the particular report to the Attorney General was made, and each report set forth as a specific item the pro-rata value of additions and betterments, and retirements, utilized in the computation of the valuation reported to the Attorney General. These reports reflected the following:

Year	Pro-rata value of additions and betterments	Pro-rata value of retirements	Net increase or (decrease) in total valuation
1950			
1951	\$77, 203	\$178, 358	\$598, 845
1952	3, 625, 718	182, 292	3, 443, 426
1953		1, 761, 072	(1, 761, 072)
1954			
1955		14, 364, 000	(14, 364, 000)
1956	1, 153, 000		1, 153, 000

267 4. The Department first questioned this construction of the Judgment by Service by letter dated August 27, 1951. Service replied on December 10, 1951, advising of the basis on which it had consistently applied pro-rata valuation in the past, and of the fact that the Department had been previously informed thereof.

5. Subsequently, on January 22, 1954, the Department wrote to Service to "raise the question as to whether the value of additions and betterments (and deduction of depreciation and retirements) which were made during the year 1952 properly enter into the computation of valuation as provided for by

the Judgment." On April 6, 1954, Service again informed the Department as to its construction of the Judgment regarding pro-rata valuation.

F. Service denies that it has wrongly calculated the permissible dividend payable to its shipper-owner and avers, on the contrary, that the facts relied upon in the Motion demonstrate the validity of Service's construction of the Judgment.

G. With respect to the allegations of paragraph 11 of the Motion, Service and Standard deny that Service "paid to the shipper-owner, Standard Oil Co. (Indiana), as a dividend for the calendar year 1952 * * * \$241,040 in excess of the amount of the dividend permitted for the calendar year 1952". On the contrary, Service and Standard represent the facts to be as follows:

1. Service's reports filed with the Department of Justice reflect the following data for the years 1952 through 1955:

268	1952	1953	1954	1955
(a) ICC Valuation ¹	\$167,196,933	\$172,187,933	\$170,119,633	\$202,263,833
(b) Pro-rata Valuation.....	3,443,426	(1,761,072)	-----	(14,394,000)
(c) Total.....	129,640,339	170,426,861	170,119,633	187,869,833
(d) 7% of above total (permissible dividends).....	11,944,825	11,929,880	11,908,374	13,132,288
(e) Earnings.....	10,881,587	10,236,141	11,180,820	14,521,989
(f) Earned less than 7% ²	1,063,238	1,693,739	757,554	-----
(g) Cumulative earned less than 7%, carry forward permitted to be paid through 1955.....	1,063,238	2,756,977	3,514,531	3,514,531
(h) Dividends paid from current year earnings.....	10,280,378	9,565,124	9,218,348	13,636,579
(i) Earned and permitted to be paid but withheld and paid in next succeeding year [Line (e) minus line (h)] ³	601,209	671,017	1,962,472	-----

¹The amounts in line (a) are ICC valuations as reported to the Attorney General less the sum of \$353,067, the value of common carrier facilities acquired through the investment of excess earnings and hence (pursuant to Paragraph III(a) of the Judgment) excluded from valuation used as the base for computing dividends payable.

²If permissible dividends are unearned in any calendar year, Paragraph III(d) of the Judgment provides that the unearned amounts may be paid within any one or more of the next succeeding three years, in addition to dividend payments permitted during each such subsequent year.

³If amounts permitted to be paid as dividends are earned but withheld in any calendar year, Paragraph III(d) of the Judgment provides that they may be paid at any time thereafter in addition to payments permitted during such subsequent years unless (i) such earned and withheld sums shall have been invested in common carrier facilities and (ii) included in valuation.

NOTE.—If pro-rata valuation [line (b)] had not been included, then line (d) would be adjusted by the following amounts, and lines (f) and (g) would be restated as follows:

	1952	1953	1954	1955
(1) Amount of adjustment [7% of pro-rata valuation—line (b)].....	\$ (241,643)	\$123,275		\$1,005,480
(2) Restated line (f), earned less than 7%.....	822,198	1,817,014	\$757,554	
(3) Restated line (g), cumulative earned less than 7%, carry forward permitted to be paid through 1955.....	822,198	2,639,212	3,396,766	3,396,766

269 2. As shown in the foregoing table, Service in its report for the year 1952 added to the valuation of its common carrier properties, as found by the Interstate Commerce Commission as of December 31, 1951, the net sum of \$3,443,426, which reflected (a) the value of additions and betterments completed during the year 1952 and (b) the amount of retirements made during that year, all valued as of the close of the next preceding year (i.e., as of December 31, 1951), in strict conformity with the provisions of Paragraph III(a) of the Judgment. Thus, to the latest final valuation made by the Interstate Commerce Commission as of December 31, 1951 was added "the value of additions and betterments to the common carrier property", valued for the year in which completed (1952) but as of December 31, 1951; in the amount of \$3,625,718. Similarly, \$182,292 was "deducted (as the) appropriate amounts for physical depreciation on, and retirements of, common carrier property",¹ resulting in the net addition to valuation of \$3,443,426.

3. The amount of \$3,625,718 as the value of additions and betterments in 1952 was arrived at (a) by utilizing period

¹ Retirements only were involved. No depreciation was taken on the additions and betterments made during 1952 since newly constructed properties sustain no depreciation. This conforms with I.C.C. valuation procedures which make no provision for depreciation of properties during the first year of their life.

prices (in accordance with the methods used by the Interstate Commerce Commission) applicable at the end of the preceding year of 1951 and (b) by prorating such value on the basis of the number of months out of 1952 that such
 270 additions and betterments were completed, in use, and contributing to common carrier earnings of Service in 1952. The amount of retirements in the sum of \$182,292 was likewise arrived at (a) by utilizing similar period prices to determine value as of the end of the preceding year of 1951 and (b) by prorating on the basis of the number of months in 1952 such retirements had been withdrawn from use and were no longer contributing to common carrier earnings.

4. Total earnings of Service for the year 1952 amounted to \$10,881,587, and fell short by \$1,063,238 of the permissible dividend payment of seven per cent of valuation as computed in the report filed by Service for that year. The amount of dividends paid by Service out of these earnings was \$10,280,378, leaving \$601,209 as earned by Service but withheld, and, therefore, payable in any subsequent year. No part of the dividends paid in the year 1952 reflected any pro-rata valuation. Total earnings for that year were insufficient to permit any payment of dividends attributable to the inclusion of pro-rata valuation in total valuation.

5. As further shown in the table in subparagraph 1 on page 6, in its annual report to the Attorney General for the calendar year 1955 (Exhibit D appended to the Motion) Service reported the latest final valuation as \$202,253,833 as of December 31, 1954. In 1955 there were no additions or betterments. However, deductions of "appropriate amounts for physical depreciation * * * and retirements", in the
 271 amount of \$14,364,000, were made on account of substantial retirements occurring in 1955 which were valued as of the end of 1954 (using period prices in accordance with Interstate Commerce Commission methods) and prorated according to the number of months out of the calendar year that the retired facilities were no longer in use and did not contribute to common carrier earnings.

7. Earnings for 1955 were in excess of seven per cent of valuation as reduced by taking into account pro-rata value of retirements. Permissible dividends, on the basis of seven per cent of such reduced figure, amounted to \$13,152,288. Dividends paid from 1955 earnings amounted to \$13,626,579, or \$474,291

in excess of seven per cent of the valuation reported for that year.² This additional amount of \$474,291 was permissibly paid under Paragraph III(d) of the Judgment by reason of the earnings deficiencies in the three prior years totaling \$3,514,531. (See lines (f) and (g) in the table set out in subparagraph 1 on page 196.)

8. Out of the total amount carried forward, pursuant to Paragraph III(d) of the Judgment, from the years 1952, 1953 and 1954, of \$3,514,531, the only carry forward attributable to the use of pro-rata valuation of additions and betterments amounted to \$241,040 in the year 1952. Eliminating this amount from the sums carried forward, and thus eliminating all carry forward attributable to pro-rata additions, the remaining carry forward \$3,514,531 less \$241,040 substantially exceeded the payments made in 1955 from that year's earnings in excess of seven per cent of valuation (\$474,291).

9. Furthermore, as indicated, total valuation as reported by Service for 1955 was reduced \$14,364,000 on account of pro-rata value of retirements made in that year. If pro-rata value is not permitted by the Judgment, total valuation for 1955 would be increased by said amount of \$14,364,000 and dividends permissibly payable from 1955 earnings would be increased by seven per cent thereof, or \$1,005,480. This is more than four times the amount of carry forward from prior years (\$241,040 from the year 1952) attributable to the inclusion of pro-rata value of additions and betterments in total valuation. Thus elimination of pro-rata values of additions and betterments and of retirements as contended for in the Motion would substantially increase the total of permissible dividends.

273

CONCLUSION

(1) Use of pro-rata valuation by Service has been in strict conformity with the provisions of Paragraph III(a) of the Judgment.

(2) Because retirements (which reduce the valuation used in computing permissible dividends) as well as additions and

² In addition to the \$13,626,570 paid as dividends out of 1955 earnings, \$1,932,472 was paid in 1955 out of earnings payable as dividends in 1954 but withheld in that year, making total dividend payments in 1955, \$15,559,051.

betterments (which increase such valuation) are included in pro-rata valuation, the net effect on the amount of dividends payable in any one year is fortuitous, and is as likely to result in disadvantage to the defendants as to their advantage. In the years involved in the Present Motion, the use of pro-rata values operated distinctly to the disadvantage of Service and its shipper-owner.

(3) In no event was any payment of dividends by Service to Standard in any year dependent upon or attributable to use of pro-rata values. Specifically in 1952, total earnings available for such payment were substantially less than the amounts payable entirely apart from any pro-rata valuation. In 1955, dividends paid were far less than the amounts permitted to be paid under the Judgment, even if amounts attributable to pro-rata valuation were excluded from the sums carried forward from preceding years. Moreover, the difference between dividends paid in 1955 and the amounts permitted to be paid would be even greater if pro-rata retirements in 1955 were eliminated in accordance with the Government's Motion.

274 Wherefore, Service, Pipe Line Company and Standard Oil Company (Indiana) pray that the Motion for Order For Carrying Out Final Judgment be dismissed.

KIRKLAND, FLEMING, GREEN,
MARTIN & ELLIS,

By Hammond E. Chaffetz,
HAMMOND E. CHAFFETZ,
John C. Butler,
JOHN C. BUTLER,
Frederick M. Rowe,
FREDERICK M. ROWE,

*Attorneys for Defendants Service Pipe Line Company
and Standard Oil Company (Indiana), 800 World
Center Building, Washington 6, D.C.*

Of counsel:

Cecil L. Hunt,
CECIL L. HUNT,
119 East Sixth Street, Tulsa 2, Oklahoma.
L. B. Lea,
L. B. LEA,
210 South Michigan Avenue, Chicago 80, Illinois.

Certificate of service (omitted in printing).

277 In United States District Court for the District of
Columbia

*Transcript of hearing—March 25, 1958 (Excerpt) Ruling of
the Court*

The COURT: Well, I do not say that your argument is without merit. But I do feel this, Mr. Karsted: Looking at the language and purpose of the decree as a whole, and considering the equities or inequities which would result by too literal an interpretation of the decree, and realizing that the purpose of the overall document is to allow a return to the companies pitched on the property currently used for public service, I do not feel that I am doing any violence to the decree as a whole when I construe it to permit that which has been done by Service and Standard of Indiana. Particularly, in view of the lapse of time and the complete and full disclosure of this interpretation over the period of time, which has operated both for and against the company as the facts dictated and has been in conformity with Interstate Commerce accounting practices, I do not feel I would be warranted in upsetting on a literal construction of a few words, although they may, in my judgment, put some doubt on the construction followed by Service and Standard.

For that reason I will deny your motion insofar as it relates to Service Pipe Line Company and Standard Oil Company of Indiana.

278 In the United States District Court for the District of
Columbia

[File endorsement omitted.]

Civil Action No. 14060

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

Order

March 26, 1958

Plaintiff having filed its motion on October 11, 1957, for an order against defendant Service Pipe Line Company to carry out the final judgment entered herein on December 23, 1941, and for such relief against defendant Standard Oil Company (Indiana) as the Court might deem appropriate, and said defendants having filed their Opposition to said Motion on March 10, 1958, and there being no contested issue of fact, and briefs having been filed and oral argument had thereon, and the Court having rendered its opinion in open court on March 25, 1958,

Now Therefore, it is hereby Ordered that the plaintiff's Motion as to defendant, Service Pipe Line Company, and defendant, Standard Oil Company (Indiana), be and the same is hereby denied.

R. B. Keech,
RICHMOND B. KEECH,
District Judge.

MARCH 26, 1958.

LIBRARY
SUPREME COURT, U. S.

VOLUME IV

**"TIDAL PIPE LINE COMPANY, ET AL.
PROCEEDINGS."**

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 210

UNITED STATES OF AMERICA, APPELLANT

vs.

THE ATLANTIC REFINING COMPANY, ET AL.

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

FILED JULY 23, 1958

PROBABLE JURISDICTION NOTED OCTOBER 13, 1958

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 210

UNITED STATES OF AMERICA, APPELLANT

VS.

THE ATLANTIC REFINING COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

CLERK'S NOTE

Pursuant to stipulation of counsel, this record is being printed in four volumes.

Volume I designated "General" contains:

Original complaint.

Final judgment (Consent Decree).

Notice of appeal.

Order of this Court noting probable jurisdiction.

Volume II designated "Arapahoe Pipe Line Company, et al. or 7% Proceedings."

Volume III designated "Service Pipe Line Company, et al. Proceedings."

Volume IV designated "Tidal Pipe Line Company, et al. Proceedings."

INDEX

	Original	Print
Record from the U.S.D.C. for the District of Columbia.....	1	1
Complaint.....	3	2
Final judgment (Consent Decree).....	12	9
Notice of appeal.....	25	20
Order noting probable jurisdiction.....	30	22
Record from the U.S.D.C. for the District of Columbia.....	31	23
Motion for order for carrying out final judgment.....	31	23
Exhibit C—Letter from Arapahoe Pipe Line Company to The Attorney General, dated April 15, 1955.....	37	29

Record from the U.S.D.C. etc.—Continued

Motion for order etc.—Continued

	Original	Print
Exhibit D—Letter from Arapahoe Pipe Line Company to Assistant Attorney General, dated April 11, 1957	38	30
Exhibit E—Letter from Arapahoe Pipe Line Company to The Attorney General, dated April 13, 1956	39	31
Arapahoe Pipe Line Company—Report to the Attorney General of the United States for the Calendar Year, 1956	40	32
Response of respondent Arapahoe Pipe Line Company in opposition to motion for order for carrying out final judgment	43	33
Exhibits:		
No. 1—Throughput Agreement between The Pure Oil Company, Sinclair Crude Oil Company and Arapahoe Pipe Line Company, dated July 15, 1954	73	52
No. 2—Mortgage and Deed of Trust between Arapahoe Pipe Line Company and The Chase National Bank of the City of New York, dated August 1, 1954	78	60
No. 3—Tentative valuation report and appendices on the Arapahoe Pipe Line Company as of December 31, 1955 with transmittal letter from I.C.C. Secretary, Harold D. McCoy, dated August 5, 1957	82	64
Interrogatories of plaintiff propounded to defendant, Arapahoe Pipe Line Company	106	86
Answers of defendant	108	87
Exhibit A-1—Arapahoe Pipe Line Company 2. Crude Oil Shipped over the Arapahoe Trunk System during years of existence, 1954 thru 1957	110	88
Exhibit A-2—Arapahoe Pipe Line Company 2. Crude Oil Gathered by Arapahoe Gathering System during years of existence, 1956 and 1957	111	89
Exhibit B—Arapahoe Pipe Line Company 3. Shipping Capacities of the Arapahoe Trunk System during years of existence 1954 thru 1957	112	89
Exhibit C—Arapahoe Pipe Line Company 4. Amount of tariff received for transportation by Trunk Line and Gathering Systems during years of existence 1954 thru 1957	113	90
Stipulation naming parties in interest, filed January 30, 1958	114	90
Petition of Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company for order to confirm rights under the judgment of December 23, 1941	116	92
Motion of Interstate Oil Pipe Line Company and Tuscarora Pipe Line Company to dismiss government's motion and for further relief	121	95
Affidavit of Arthur H. Dean	126	97

INDEX

III

Record from the U.S.D.C. etc.—Continued

	Original	Print
Statement pursuant to stipulation of January 30, 1958.....	134	103
Answer and statement of defendant, Magnolia Pipe Line Company.....	139	107
Statement of Plantation Pipe Line Company in opposition to plaintiff's motion directed against Arapahoe Pipe Line Company.....	146	111
Exhibits:		
No. 1 and attachment—Letter from C. R. Younts, President to The Attorney General, dated April 14, 1943 and Report of Plantation Pipe Line Company, dated April 14, 1943.....	151	114
No. 2—Letter from Tom C. Clark, Assistant Attorney General to S. V. Kane, dated April 22, 1943.....	152	115
No. 3—Letter from C. R. Younts, by S. V. Kane to Tom C. Clark, dated May 14, 1943.....	153	116
No. 4 and attachment—Letter from S. V. Kane to Tom C. Clark, Attorney General, dated April 12, 1949 and Report of Plantation Pipe Line Company, dated April 12, 1949.....	154	117
No. 5—Letter from Wendell Berge, Assistant Attorney General to S. V. Kane, dated June 23, 1944.....	156	119
No. 6—Letter from Plantation Pipe Line Company to Wendell Berge, Assistant Attorney General, dated July 17, 1944.....	157	119
No. 7—Letter from George Koegler to H. Graham Morrison, Assistant Attorney General, dated June 17, 1951.....	158	120
No. 8—Letter from Newell A. Clapp to George Koegler, Standard Oil Company (N.J.) dated July 5, 1951.....	160	122
No. 9—Letter from George Koegler to Newell A. Clapp dated July 9, 1951.....	161	123
No. 10—Letter from Newell A. Clapp to George Koegler dated July 13, 1951.....	162	124
Statement of the defendant, Great Lakes Pipe Line Company pursuant to stipulation of January 30, 1958.....	163	125
Attachments 1, 2, 3, and 4—Correspondence between the Attorney General's office and R. A. Kroenert, dated May 29, 1943; June 24, 1943; August 23, 1943 and August 30, 1943.....	168	129
Petition of defendant, Great Lakes Pipe Line Company for order declaring plan set forth in petition is not in violation of the judgment, etc.....	176	135
Affidavit of James J. Cosgrove.....	183	140
Order dispensing with service of copy of petition on certain defendants.....	185	142
Order that plan set forth in petition is not a violation of said judgment.....	187	143

Record from the U.S.D.C. etc.—Continued

Original Print

Statement of Shell Pipe Line Corporation in opposition to plaintiff's motion directed against Arapahoe Pipe Line Company.....	189	145
Actual Statement of Sinclair Pipe Line Company successor to defendant Sinclair Refining Company in opposition to motion of United States v. Arapahoe Pipe Line Company for order carrying out final judgment.....	192	147
Exhibits:		
No. 1—Letter from Consolidated Oil Corporation to Thurman W. Arnold dated November 16, 1942.....	208	155
No. 2—Letter from Thurman Arnold to Consolidated Oil Corporation, dated November 17, 1942.....	211	157
No. 3—Letter from Sinclair Pipe Line Company to The Attorney General, dated April 12, 1955.....	214	158
Exhibit A—Sinclair Pipe Line Company—I.C.C.'s final value as of December 31, 1947, etc.....	216	161
Exhibit A-1—Valuation Report for Pipe Line property of Sinclair Pipe Line Company as of December 31, 1953.....	218	162
Exhibit No. 4—Letter from Stanley N. Barnes, Assistant Attorney General, to William H. Morris, dated April 28, 1955.....	220	163
Exhibit No. 5—Letter from R. C. Bearden to Stanley N. Barnes, dated May 18, 1955.....	222	164
Statement of defendant, The Texas Pipe Line Company relating to motion of plaintiff with respect to Arapahoe Pipe Line Company, filed pursuant to stipulation and order of January 30, 1958.....	224	166
Statement of defendant, Texaco-Cities Service Pipe Line Company (formerly named The Texas-Empire Pipe Line Company) relating to motion of plaintiff with respect to Arapahoe Pipe Line Company filed pursuant to stipulation and order on January 30, 1958.....	228	168
Statement of defendant, Texas-New Mexico Pipe Line Company, relating to motion of plaintiff with respect to Arapahoe Pipe Line Company, filed pursuant to stipulation and order of January 30, 1958.....	232	170
Statement of defendant Humble Pipe Line Company pursuant to stipulation of January 30, 1958.....	236	172
Answer of plaintiff, United States, to petition of Interstate Pipe Line Co. and Tuscawara Pipe Line Co., Ltd. for order to confirm rights under the judgment of December 23, 1941.....	241	175

INDEX

V

Record from the U.S.D.C. etc.—Continued

Original Print

Order directing plaintiff to serve all defendants with its motion papers addressed to Arapahoe and consolidating petition of Interstate and Tuscarora for hearing with and motion on March 24, 1958.....	243	177
Transcript of hearing of March 24, 1958 (Excerpt from) Statement by the court.....	244	178
Three motions of government denied.....	245	179
Order denying plaintiff's motion for an order for carrying out final judgment against Arapahoe Pipe Line Company, etc.....	250	180
Motion for order carrying out the final judgment entered on December 23, 1941.....	252	183
Exhibit C—Transmittal letter from Service Pipe Line Company to The Attorney General, dated December 1, 1953.....	258	188
Service Pipe Line Company—Amended Report to the Attorney General of the United States for the Calendar Year 1953.....	259	189
Exhibit D—Transmittal letter from Service Pipe Line Company to The Attorney General, dated April 6, 1956.....	260	190
Service Pipe Line Company—Report to the Attorney General of the United States for the Calendar Year 1955.....	261	191
Opposition of Service Pipe Line Company and Standard Oil Company (Indiana) to motion for order for carrying out final judgment.....	263	193
Transcript of hearing of March 25, 1958 (Excerpt from) Ruling of the Court.....	277	201
Order denying motion for an order to carry out the final judgment entered on December 31, 1941.....	277	201
Motion for order for carrying out the final judgment entered December 31, 1941.....	278	202
Exhibit C—Transmittal letter from Tidal Pipe Line Company to Attorney General, dated September 25, 1950.....	279	203
Revised reports made on behalf of Tidal Pipe Line Company for the calendar years 1942 through 1948 inclusive.....	289	211
Exhibit D—Transmittal letter from Tidal Pipe Line Company to Attorney General, dated September 10, 1953.....	290	212
Revised reports made on behalf of Tidal Pipe Line Company for the calendar years 1949 through 1952 inclusive.....	305	226
Exhibit E—Transmittal letter from Tidal Pipe Line Company to Attorney General dated September 27, 1954.....	306	227
	315	234

Record from the U.S.D.C., etc.—Continued
 Motion for order, etc.—Continued
 Exhibit E—Continued

Original Print

Revised report made on behalf of Tidal Pipe Line Company for the year 1953.....	316	235
Response of Tidal Pipe Line Company and Tidewater Oil Company to plaintiff's motion for order for carrying out the final judgment entered January 23, 1941.....	317	236
Exhibits:		
A to F—Tidal Pipe Line Company annual reports to the Attorney General for the calendar years 1948 through 1953 inclusive.....	330	245
G—Letter from Stanley M. Barnes, Assistant Attorney General to Mr. Y. P. Broome, Secretary, Tidal Pipe Line Company, dated March 10, 1953 (?) 54.....	342	255
H—Letter from Tidal Pipe Line Company by Y. P. Broome to Stanley M. Barnes, dated April 8, 1954.....	343	255
I—Letter from Stanley M. Barnes to Y. P. Broome, Tidal Pipe Line Company, dated September 19, 1955.....	345	257
J—Letter from Tidal Pipe Line Company to Stanley M. Barnes, dated October 20, 1955.....	346	257
K—Telegram from Victor R. Hanson, Asst. Attorney General to Lloyd Armstrong, Tidal Pipe Line Company.....	347	258
L—Telegram from Lloyd Armstrong, Tidal Pipe Line Company to Victor R. Hanson.....	348	259
Appendix.....	352	259
Tidal's original 1943 report to Attorney General.....	353	259
Letter from Wendell Berge to Y. P. Broome, Tidal Pipe Line Company, dated April 22, 1944.....	353	259
Letter from Tidal Pipe Line Company to Attorney General, dated April 6, 1944.....	354	260
Tidal Pipe Line Company—Valuation used as earnings basis, December 31, 1942.....	355	261
Tidal's original 1944 report to Attorney General.....	356	262
Acknowledging Letter from Wendell Berge to Y. P. Broome, Tidal Pipe Line Company, dated April 25, 1945.....	356	262
Letter from Tidal Pipe Line Company to Attorney General dated April 9, 1945.....	357	263
Tidal Pipe Line Company—Valuation used as earnings basis as of December 31, 1943.....	358	264
Tidal's revised 1943 report to Attorney General.....	359	266
Letter from Y. P. Broome to Attorney General, dated September 25, 1950.....	359	266
Tidal Pipe Line Company—Estimated Valuation of Properties as of December 31, 1942 at 1947 period prices.....	360	267

Record from the U.S.D.C., etc.—Continued

Appendix—Continued

	Original	Print
Tidal's revised 1944 report to Attorney General.....	361	2
Letter from Y. P. Broome to Attorney General, dated September 25, 1950.....	361	267
Tidal Pipe Line Company—Estimated Valuation of Properties as of December 31, 1943 at 1947 period prices.....	362	269
Tidal's revised 1945 report to Attorney General:		
Letter from Y. P. Broome to Attorney General, dated September 25, 1950.....	363	269
Tidal Pipe Line Company—Estimated valuation of properties as of December 31, 1944 at 1947 period prices.....	364	271
Tidal's revised 1946 report to Attorney General.....	365	271
Letter from Y. P. Broome to Attorney General, dated September 25, 1950.....	365	271
Tidal Pipe Line Company—Estimated Valuation of properties as of December 31, 1945 at 1947 period prices.....	366	273
Tidal's revised 1947 report to Attorney General:		
Letter from Y. P. Broome to Attorney General, dated September 25, 1950.....	367	273
Tidal Pipe Line Company—Estimated Valuation of Properties as of December 31, 1946 at 1947 period prices.....	368	275
Transcript of hearing of March 25, 1958 (Excerpt from)...	370	275
Ruling of the Court.....	370	275
Order denying motion for an order directing Tidal Pipe Line Company to carry out the judgment entered December 23, 1941, etc.....	372	276

279 In the United States District Court for the District of
Columbia

[File endorsement omitted.]

Civil Action No. 14060

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

*Motion for order for carrying out the final judgment entered in
the above cause on December 23, 1941*

Filed October 11, 1957

The United States of America, by its attorneys, moves this Court for an order directing the defendant Tidal Pipe Line Company to carry out the judgment entered in the above cause on December 23, 1941, and for such relief against the defendant Tidewater Oil Company as the Court deems appropriate and proper under the circumstances. Movant represents to the Court as follows:

1. The complaint in this cause was filed by the United States of America, acting through its Attorney General, on December 23, 1941. The complaint, a copy of which is attached hereto and marked Exhibit A, charged the defendants, consisting of fifty-three common carrier pipeline companies and their thirty-six oil company shipper-owners with having violated Section 1(1) of the "Elkins Act," as amended, 34 Stat. 587-9, 49 U.S.C. § 41, by the giving and receiving of illegal rebates under the guise of dividends and earnings.

2. On December 23, 1941, the Court, by consent of the parties, entered a Final Judgment in this action (hereinafter referred to as the "Judgment"), a copy of which is attached hereto and marked Exhibit B.

3. Under the provisions of Paragraph X of the Judgment, the Court retained jurisdiction for the purpose of enabling

280 any of the parties to apply to the Court at any time for such orders and directions as may be necessary or appropriate in relation to the carrying of the Judgment and the enforcement of compliance therewith.

4. Paragraph VI of said Judgment provides that:

"In the event a shipper-owner or defendant common carrier should knowingly violate the provisions of paragraphs III or IV hereof, then and in such event, upon proof of such violation on hearing after notice, and in lieu of any and all other remedies or proceedings for the enforcement hereof, the United States may have judgment entered in this cause against the recipient of any sums, the payment of which is prohibited by this judgment, for three times the amount by which the sum received exceeds the amount permitted by this judgment to be granted, credited, given or paid to such recipient."

5. The defendant Tide Water Associated Oil Company (the name of which has been changed to Tidewater Oil Company), which is a defendant shipper-owner in this cause and a party to the said Judgment, has at all times since the entry of the Judgment controlled, through ownership of the outstanding capital stock, the defendant Tidal Pipe Line Company (sometimes hereinafter referred to as the defendant Tidal), which is a defendant common carrier in this cause and likewise a party to the said Judgment.

6. In regard to the amount of the dividends which the defendant common carrier can credit, give, grant or pay to its defendant shipper-owner in any calendar year, Paragraph III of the said Judgment provides as follows:

"No defendant common carrier shall credit, give, grant, or pay, directly or indirectly, through or by any means or device whatsoever, to any shipper-owner in any calendar year, commencing as of January 1, 1942, any earnings, dividends, sums of money or other valuable considerations derived from transportation or other common carrier services which in the aggregate is in excess of its share of seven per centum (7%) of the valuation of such common carrier's property, if such common carrier shall have transported during said calendar year any crude oil, or gasoline, or other petroleum products for said shipper-owner, but shall be permitted (insofar as the Interstate Commerce and Elkins Acts are concerned) to credit, give, grant or pay said per centum."

7. The valuation upon which the defendant carrier's permissible dividend to the shipper-owner is calculated

281 is limited to the valuation of property "owned and used" by the carrier for common carrier purposes, Paragraph III(a) of said Judgment providing in part as follows:

"Valuation as hereinabove used shall mean the latest final valuation of each common carrier's property owned and used for common carrier purposes as made by the Interstate Commerce Commission."

8. The defendant carrier may withhold permissible dividends earned in any calendar year and pay such dividends in subsequent years, according to paragraph III(c) of said Judgment, which provides as follows:

"Any amounts permitted to be credited, granted, paid or given during any calendar year as hereinabove provided, if earned and withheld, may be credited, granted, paid or given at any time thereafter in addition to credits and payments permitted during such subsequent years, unless (i) such earned and withheld sums shall have been invested in common carrier facilities and (ii) included in valuation as above defined."

9. The defendant shipper-owner is prohibited in Paragraph IV of said Judgment from accepting any sums of money which the carrier is prohibited by the provisions of Paragraph III from paying, Paragraph IV providing as follows:

"No shipper-owner shall solicit, accept or receive, directly or indirectly, through or by any means or device whatsoever, from any defendant common carrier any sums of money or other valuable considerations which said defendant common carrier is prohibited from granting, crediting, paying, or giving by the provisions of paragraph III hereof."

10. The defendant carrier was directed to render annual reports to the Attorney General by Paragraph VIII of the said Judgment which provides as follows:

"Each defendant common carrier shall render a report to the Attorney General of the United States not later than the 15th day of April of each year, showing for the preceding calendar year: the valuation used as earnings basis; total earnings available for distribution to owners or stockholders; earnings, dividends, payments or benefits credited, paid, granted or given to all stockholders or owners; and amounts of money transferred to or withdrawn from the surplus retained pursuant to paragraph V hereof."

282 11. The defendant Tidal Pipe Line Company has knowingly violated the provisions of Paragraph III of said Judgment by crediting and paying to its shipper-owner,

Tide Water Associated Oil Company, dividends and sums of money totalling \$20,776.30 which it is prohibited by Paragraph III from crediting and paying and its shipper-owner, the defendant Tide Water Associated Oil Company, has been the recipient of such sums.

12. The violation charged in paragraph 11, supra, has been accomplished by the defendant Tidal Pipe Line Company computing the permissible 7% dividend to its shipper-owner on the basis of all property used by it for common carrier purposes, whether owned by it or not, in violation of the requirement of paragraph III(a) which specifies that the shipper-owner's permissible dividend shall be computed on the basis of the valuation of the common carrier's property "owned and used" for common carrier purposes as made by the Interstate Commerce Commission. The difference in the valuation of defendant Tidal Pipe Line Company's property "owned and used" for common carrier purposes as made by the Interstate Commerce Commission and the valuation used by the defendant carrier as the basis upon which it computed the shipper-owner's dividend as reported to the Attorney General is shown by the following tabulation:

Year	Valuation used by defendant Tidal	ICC valuation of defendant Tidal's property "owned and used" for common carrier purposes	Difference
1947	\$1,064,365	\$1,633,000	\$11,365
1948	1,052,364	1,662,300	70,064
1949	1,867,864	1,630,800	67,364
1950	1,807,464	1,808,400	106,064
1951	1,942,364	1,734,500	107,764
1952	1,774,864	1,710,800	64,064

283 13. On September 25, 1950 the defendant Tidal submitted a Revised Report to the Attorney General for the calendar years 1942 through 1948 (a copy of which is attached hereto and marked Exh. C). For each of such years the defendant Tidal calculated its shipper-owner's permissible 7% dividend on the basis of the valuation of its (Tidal's) common carrier property as of December 31st of the preceding year as required by paragraph III of the Judgment. After entry of the Judgment no Valuation Report of the Defendant Tidal's

property owned and used for common carrier purposes was made by the Interstate Commerce Commission until December 16, 1949 at which time the Interstate Commerce Commission issued a Valuation Report for Tidal as of December 31, 1947. Consequently, for the calendar years 1942 through 1947, Tidal perforce made its own valuation of its common carrier property (as required by paragraph III(a) of the Judgment) and on the basis of such valuation calculated its shipper-owner's permissible 7% dividend and reported the amounts paid to its shipper-owner for each of such years as follows:

Calendar year	Permissible 7% dividend	Amount of dividend paid	Amount "earned and withheld"
1942.....	95,900.00	75,000.00	20,900.00
1943.....	98,560.00	75,000.00	23,560.00
1944.....	98,140.00	75,000.00	23,140.00
1945.....	100,730.00	75,000.00	25,730.00
1946.....	106,820.00	75,922.05	30,897.00
1947.....	109,270.00	75,000.00	34,270.00
			158,497.00

●In addition, for the calendar year 1946, Tidal reported paying to its shipper-owner \$49,231.30 "from prior year's earnings". Thus at the close of the calendar year 1947, Tidal had a total amount of dividends "earned and withheld" of \$109,265.70.

284 *Revised Report to the Attorney General for the calendar year 1949—(Exh. D)*

I.C.C. Val. as of 12-31-48 (ICC Docket 1288).....	\$1,882,200.00
Seven Percent.....	131,750.00
Dividend paid "from current year's earnings" (Exh. D).....	105,000.00
Balance "earned and withheld".....	26,754.00
Prior total of amounts "earned and withheld".....	124,975.70
Dividend paid "from prior years earnings" (Exh. D).....	10,000.00
Balance "earned and withheld".....	114,975.70
Total amount "earned and withheld".....	141,729.70

208 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

Revised Report to the Attorney General for the calendar year 1950— (Exh. D)

I.C.C. Val. as of 12-31-49 (ICC Docket 1288)-----	\$1, 820, 500. 00
Seven percent-----	127, 435. 00
Dividend paid "from current year's earnings" (Exh. D)-----	62, 598. 00
Balance "earned and withheld"-----	64, 837. 00
Prior total of amounts "earned and withheld"-----	141, 729. 70
Dividend paid "from prior years earnings" (Exh. D)-----	137, 402. 00
Balance "earned and withheld"-----	4, 327. 70
Total amount "earned and withheld"-----	69, 164. 70

Revised Report to the Attorney General for the calendar year 1951— (Exh. D)

I.C.C. Val. as of 12-31-50 (ICC Docket 1288)-----	1, 698, 400. 00
Seven percent-----	118, 888. 00
Dividend paid "from current year's earnings" (Exh. D)-----	82, 917. 00
Balance "earned and withheld"-----	35, 971. 00
Prior total of amounts "earned and withheld"-----	69, 164. 70
Dividend paid "from prior years earnings" (Exh. D)-----	67, 083. 00
Balance "earned and withheld"-----	2, 091. 70
Total amount "earned and withheld"-----	38, 052. 70

Revised Report to the Attorney General for the calendar year 1952— (Exh. D)

I.C.C. Val. as of 12-31-51 (ICC Docket 1288)-----	1, 734, 500. 00
Seven percent-----	121, 415. 00
Dividend paid "from current year's earnings" (Exh. D)-----	169, 632. 00
Balance "earned and withheld"-----	11, 783. 00
Prior total of amounts "earned and withheld"-----	38, 052. 70
Dividend paid "from prior years earnings" (Exh. D)-----	40, 368. 00
Amount paid in excess of fund-----	2, 315. 30

Excess must have been paid from current year's earnings thus leaving as total "earned and withheld"--- 9, 467. 70

285 As heretofore alleged, on December 16, 1949 the Interstate Commerce Commission issued a Valuation Report for Tidal as of December 31, 1947 (I.C.C. Valuation Docket

No. 1288) and thereafter annually issued Valuation Reports for Tidal (under I.C.C. Valuation Docket No. 1288) for each year subsequent to December 31, 1947. In each such Valuation Report, the Interstate Commerce Commission reported the valuation of the property, "owned and used" by Tidal for common carrier purposes. However, in violation of paragraph III of the Judgment, Tidal in its Revised Reports for the calendar years 1948 through 1953 (copies of which are attached hereto and marked Exh. C, D and E) reported the valuation of all the property used by it for common carrier purposes as its "valuation" (including property leased by it from its shipper-owner and others). Likewise in violation of paragraph III of the Judgment, Tidal, for each of the aforesaid calendar years,* calculated its shipper-owner's permissible 7% dividend on the basis of the valuation of all property used by it for common carrier purposes rather than on the basis of property "owned and used" by it for common carrier purposes as required by paragraph III of the Judgment. In this manner the defendant Tidal calculated and paid, and its shipper-owner received and accepted, amounts in violation of the Judgment as follows:

Revised Report to the Attorney General for the calendar year 1948—

(Exh. C)

I.C.C. Val. as of 12-31-47 (ICC Docket 1288)-----	1,653,000.00
Seven percent-----	115,710.00
Dividend paid "from current year's earnings" (Exh. C)-----	81,834.55
Balance "earned and withheld"-----	33,875.45
Prior total of amounts "earned and withheld"-----	109,265.70
Dividend paid "from prior years earnings" (Exh. C)-----	18,165.45
Balance in "earned and withheld" fund-----	91,100.25
Total amount "earned and withheld"-----	124,975.70

*Tidal has continued this practice up to the present time but its earnings for the calendar years subsequent to 1953 have not been such as to enable it to actually pay the erroneously calculated sums to its shipper-owner.

286 Revised Report to the Attorney General for the calendar year 1953—(Exh. E)

I.C.C. Val. as of 12-31-52 (ICC Docket 1288)	1,710,800.00
Seven percent	119,756.00
Dividend paid "from current year's earnings" (Exh. E)	114,940.00
Balance "earned and withheld"	4,816.00
Prior total of amounts "earned and withheld"	9,467.70
Dividend paid "from prior years earnings" (Exh. E)	35,060.00
Amount paid in excess of fund	25,592.30
Amount paid in excess of, any and all sums "earned and withheld" and therefore paid in violation of the Judgment	20,776.30

14. Therefore, the petitioner alleges as follows:

(A) That since September 25, 1950, the defendant Tidal Pipe Line Company has followed a continuous course of conduct designed to violate, and followed for the purpose of violating, paragraphs III and V of the Judgment.

(B) That for the calendar years 1948 through 1953 the defendant Tidal, in violation of the Judgment, calculated its permissible 7% dividend to its shipper-owner on the basis of property used by it for common carrier purposes but not owned by it and thus its reported permissible 7% dividends exceeded those permitted by the Judgment in the following amounts:

For calendar year 1948	\$795
For calendar year 1949	4,904
For calendar year 1950	4,715
For calendar year 1951	7,634
For calendar year 1952	7,543
For calendar year 1953	4,484
Total	30,075

All of which amounts the defendant Tidal knowingly failed and neglected to put in its Surplus Account as required by paragraph V of the Judgment, and instead, knowingly paid the greater part of said amounts to its shipper-owner in violation of paragraph III.

287 (C) That for the calendar year 1953, as reported in its revised report to the Attorney General, submitted on September 27, 1954 (Exh. E), the defendant Tidal knowingly paid to its shipper-owner the sum of \$20,776.30, purportedly from amounts previously "earned and withheld" as provided in paragraph III(c) of the Judgment but which sum

of \$20,776.30 was in fact never "earned and withheld" as provided in paragraph III(c) of the Judgment and was in fact paid by the defendant Tidal to its shipper-owner in violation of paragraph III of the Judgment.

Wherefore, the Government requests this Court to issue an order carrying out the Final Judgment by directing the defendant Tidal Pipe Line Company henceforth to compute its shipper-owner's permissible dividend each year on the basis of the valuation of the property owned and used by the carrier for common carrier purposes as provided in paragraph III of the Final Judgment, and for such relief against the defendant Tidewater Oil Company as the Court deems appropriate and proper under the circumstances.

Respectfully submitted.

Alfred Karsted,
ALFRED KARSTED,

Attorney, Department of Justice.

288 [Filed October 11, 1957.]

289 Exhibit C to motion

TIDAL PIPE LINE COMPANY
BOX 731, TULSA 2, OKLAHOMA

SEPTEMBER 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, we are submitting revised reports made in behalf of the Tidal Pipe Line Company for the years 1942 through 1948 inclusive. These have been prepared to conform with the Interstate Commerce Commission's latest valuation data dated December 31, 1947.

A summary is attached showing that as a result of the revised valuations for this period, the allowable dividends for the same period are increased \$115,753.93.

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. Broome,
Y. P. BROOME, Secretary

cc. Interstate Commerce Commission, Attn: Mr. W. P. Bartel, Secretary, Washington 25, D.C.

Attachments to Exhibit C

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1942:

1. Valuation as of December 31, 1941—Used as earnings basis	\$1,370,000.00
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P")	255,421.57
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)	
4. Net earnings from Transportation and other common carrier services	255,421.57
5. 7% of Valuation of Common Carrier Property	95,900.00
6. Excess earnings transferred to Special Surplus Account	159,521.57

Dividends Paid During Year

Dividends paid to stockholders:

1. From earnings on Transportation and Other Common Carrier Services (Earned subsequent to January 1, 1942)	
(a) From current year's allowable earnings	75,000.00
(b) From prior year's allowable earnings	
2. From earnings made prior to January 1, 1942:	
(a) From Balance in Surplus January 1, 1942	
(b) From Depreciation Reserve Adjustment	412,500.00
Total Dividends paid to stockholders	487,500.00

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. Broome,
Y. P. BROOME, Secretary

cc: Interstate Commerce Commission, Attn: Mr. W. R. Bartel, Secretary, Washington 25, D.C.

291

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1943:

1. Valuation as of December 31, 1942—Used as earnings basis	\$1,408,000.00
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P")	283,206.43
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)	1,439.00
4. Net earnings from Transportation and other common carrier services	283,845.63
5. 1% of Valuation of Common Carrier Property	98,560.00
6. Excess earnings transferred to Special Surplus Account	185,285.63

Dividends paid during year

Dividends paid to stockholders:

1. From earnings on Transportation and Other Common Carrier Services (Earned Subsequent to January 1, 1942):	
(a) From current year's allowable earnings	\$75,000.00
(b) From prior year's allowable earnings	-----
2. From earnings made prior to January 1, 1942:	
(a) From Balance in Surplus January 1, 1942	-----
(b) From Depreciation Reserve Adjustment	-----
Total Dividends paid to stockholders	75,000.00

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. Broome,
Y. P. BROOME, Secretary.

cc: Interstate Commerce Commission, Attn: Mr. W. P. Bartel, Secretary, Washington 25, D.C.

*Estimated valuation of properties as of December 31, 1941 at 1947
period prices*

	Original cost	Cost of re- production new	Cost of re- production less depre- ciation	Condition percent
SUMMARY—OWNED AND USED (Excluding Land and Rights-of-Way)				
Val. Sec. 1-G Conroe Gathering.....	\$190,564	\$351,117	\$206,371	59.63
Val. Sec. 2-G East Texas Gathering.....	532,715	208,906	558,793	61.48
Val. Sec. 1-T Conroe, Texas Trunk Line.....	217,830	521,414	284,010	72.46
Val. Sec. 1-G Oklahoma Gathering.....	1,006,338	1,529,577	711,253	46.50
	1,947,437	3,181,014	1,763,429	55.44
SUMMARY—USED—NOT OWNED (Excluding Land and Rights-of-Way)				
Total Used.....	1,947,437	3,181,014	1,763,429	55.44

Estimated final valuation as of December 31, 1941 at 1941 period prices

	Gross	Percent	Net
1. Original Cost.....	\$1,947,437	47.38	\$922,696
2. Reproduction Cost—New (68% of 1947 Period).....	2,163,090	52.62	1,138,219
3. Total.....	4,110,527	100.00	2,060,914
4. Condition Percent (55.44).....			1,142,571
5. 6% Going Concern and Other Elements of Value.....			68,554
6. Land.....			431
7. Rights-of-Way.....			45,702
8. Working Capital.....			112,742
9. Final Value.....			1,370,000

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1942 at 1947 period prices

	Original cost	Cost of re-production new	Cost of re-production less depreciation	Condition percent
SUMMARY—OWNED AND USED (Excluding Land and Rights-of-Way)				
Val. Sec. 1-G Conroe Gathering.....	\$196,659	\$374,360	\$215,747	57.63
Val. Sec. 2-G East Texas Gathering.....	546,686	946,961	562,265	59.48
Val. Sec. 1-T Conroe, Texas Trunk Line.....	218,333	394,012	279,968	71.06
Val. Sec. 1-3-T East Texas Main Line.....	699,407	1,104,988	751,085	67.97
	1,660,105	2,820,271	1,810,047	64.18
SUMMARY—USED—NOT OWNED (Excluding Land and Rights-of-Way)				
Val. Sec. 4-T East Texas Main Line.....	6,840	12,964	12,566	66.00
Total used.....	1,666,945	2,840,235	1,822,615	64.21

Estimated final valuation as of December 31, 1942 at 1942 period prices

	Gross	Percent	Net
1. Original Cost (Less Land and R.O.W.).....	\$1,666,945	44.90	\$748,428
2. Reproduction Cost—New (72% of 1947 Period).....	2,044,962	55.10	1,126,774
3. Total.....	3,711,907	100.00	1,875,222
4. Condition Percent (64.21).....			1,204,066
5. 6% Going Concern.....			72,177
6. Land.....			1,579
7. Rights-of-Way.....			18,792
8. Working Capital.....			111,866
9. Final Value.....			1,408,000

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al. District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1944:

1. Valuation as of December 31, 1943—Used as earnings basis-----	\$1,402,000.00
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P")-----	342,927.90
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)-----	3,644.46
4. Net earnings from Transportation and other common carrier services-----	339,283.44
5. 7% of Valuation of Common Carrier Property-----	98,140.00
6. Excess earnings transferred to Special Surplus Account-----	241,143.44

Dividends paid during year

Dividends paid to stockholders:

1. From earnings on Transportation and Other Common Carrier Services (Earned subsequent to January 1, 1942):	
(a) From current year's allowable earnings-----	75,000.00
(b) From prior year's allowable earnings-----	
2. From earnings made prior to January 1, 1942:	
(a) From Balance in Surplus January 1, 1942-----	
(b) From Depreciation Reserve Adjustment-----	
Total Dividends paid to Stockholders-----	75,000.00

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. Broome,
Y. P. BROOME, *Secretary*.

cc: Interstate Commerce Commission, Attn: Mr. W. P. Bartel, Secretary, Washington 25, D.C.

295

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1943 at 1947 period prices

	Original cost	Cost of reproduction new	Cost of reproduction less depreciation	Condition percent
SUMMARY—OWNED AND USED (Excluding Land and Rights-of-Way)				
Val. Sec. 1-G Conroe Gathering.....	\$196,519	\$365,558	\$208,035	56.90
Val. Sec. 2-G East Texas Gathering.....	547,638	953,451	553,161	58.02
Val. Sec. 1-T Conroe, Texas Trunk Line.....	221,912	304,013	271,567	68.92
Val. Sec. 1-3-T East Texas Main Line.....	706,715	1,135,835	750,170	66.05
	1,672,784	2,848,887	1,782,933	62.58
SUMMARY—USED—NOT OWNED (Excluding Land and Rights-of-Way)				
Val. Sec. 4-T East Texas Main Line.....	\$,840	19,954	12,970	65.00
Total Used.....	1,679,624	2,868,841	1,795,903	62.60

Estimated final valuation as of December 31, 1943 at 1943 period prices

	Gross	Percent	Net
1. Original Cost.....	\$1,679,624	43.51	\$730,804
2. Reproduction Cost—New (76% of 1947 Period).....	2,180,319	56.49	1,651,662
3. Total.....	3,859,943	100.00	1,962,466
4. Condition percent (62.60).....			1,222,964
5. 6% Going Concern and Other Elements of Value.....			73,710
6. Land.....			1,579
7. Rights-of-Way.....			18,288
8. Working Capital.....			29,919
9. Final Value.....			1,402,000

296

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25; D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Colum-

bia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1945:

1. Valuation as of December 31, 1944—Used as earnings basis.....	\$1,439,000.00
2. Total Net earnings (Line 39, Schedule 302, Annual Report Form "P").....	329,151.00
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes).....	4,747.39
4. Net earnings from Transportation and other common carrier services.....	324,403.61
5. 7% of Valuation of Common Carrier Property.....	100,730.00
6. Excess earnings transferred to Special Surplus Account.....	223,673.61

Dividends paid during year

Dividends paid to stockholders:

1. From earnings on Transportation and other common carrier services (Earned subsequent to January 1, 1942):	
(a) From current year's allowable earnings.....	75,000.00
2. From earnings made prior to January 1, 1942:	
(a) From Balance in Surplus January 1, 1942.....	-----
(b) From Depreciation Reserve Adjustment.....	-----
Total Dividends paid to stockholders.....	75,000.00

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. Broome,
Y. P. BROOME, Secretary.

cc. Interstate Commerce Commission, Attn: Mr. W. P. Bartel, Secretary, Washington 25, D.C.

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1944 at 1947 period prices

	Original cost	Cost of reproduction new	Cost of reproduction less depreciation	Condition percent
SUMMARY—OWNED AND USED (Excluding Land and Rights-of-Way)				
Val. Sec. 1-G Conroe Gathering.....	\$201,606	\$372,750	\$201,013	54.08
Val. Sec. 3-G East Texas Gathering.....	572,619	970,081	583,909	58.13
Val. Sec. 1-T Conroe Texas Trunk Line.....	222,674	304,947	202,246	66.40
Val. Sec. 1-3-T East Texas Main Line.....	787,904	1,162,285	782,501	65.61
	1,784,806	2,900,013	1,769,669	61.73
SUMMARY—USED—NOT OWNED (Excluding Land and Rights-of-Way)				
Val. Sec. 4-T East Texas Main Line.....	8,840	19,954	12,571	63.00
Total Used.....	1,741,646	2,919,967	1,802,640	61.73

Estimated final valuation as of December 31, 1944 at 1944 period prices

	Gross	Percent	Net
1. Original Cost.....	\$1,741,646	43.02	\$749,256
2. Reproduction Cost—New (79% of 1947 Period).....	2,306,774	56.98	1,814,400
3. Total.....	4,048,420	100.00	2,563,656
4. Condition Percent (61.73).....			1,579,886
5. 6% Going Concern and Other Elements of Value.....			76,434
6. Land.....			1,879
7. Rights-of-Way.....			18,348
8. Working Capital.....			68,744
9. Final Value.....			1,439,000

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No: 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein; for the year 1946:

1. Valuation as of December 31, 1945—Used as earnings basis	\$1, 520, 000. 00
2. Total net earnings (Line 39, Schedule 302, Annual Report Form—"P")	366, 455. 81
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)	5, 614. 24
4. Net earnings from Transportation and other common carrier services	360, 841. 57
5. 7% of Valuation of Common Carrier Property	106, 820. 00
6. Excess earnings transferred to Special Surplus Account	254, 021. 57

Dividends Paid During Year

Dividends paid to stockholders:

1. From earnings on Transportation and Other Common Carrier Services (Earned subsequent to January 1, 1942):	
(a) From current year's allowable earnings	75, 922. 95
(b) From prior year's allowable earnings	49, 231. 30
2. From earnings made prior to January 1, 1942:	
(a) From Balance in Surplus January 1, 1942	17, 345. 75
(b) From Depreciation Reserve Adjustment	
Total Dividends paid to stockholders	142, 500. 00

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. Broome,
Y. P. BROOME, Secretary.

cc: Interstate Commerce Commission, Attn: Mr. W. P. Barte, Secretary, Washington 25, D.C.

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1945 at 1947 period prices

	Original cost	Cost of re-production new	Cost of re-production less depreciation	Condition percent
SUMMARY—OWNED AND USED (Excluding Land and Rights-of-Way)				
Val. Sec. 1-G Conroe Gathering.....	\$204,318	\$383,995	\$201,772	52.55
Val. Sec. 2-G East Texas Gathering.....	593,385	999,945	550,895	57.72
Val. Sec. 1-T Texas Trunk Line.....	225,646	366,617	257,275	64.54
Val. Sec. 1-3-T East Texas Main Line.....	738,518	1,168,883	743,512	63.61
	1,761,867	2,921,410	1,762,457	60.33
SUMMARY—USED—NOT OWNED (Excluding Land and Rights-of-Way)				
Val. Sec. 4-T East Texas Main Line.....	5,540	19,954	17,165	60.98
Total Used.....	1,767,407	2,941,364	1,779,625	60.33

Estimated final valuation as of December 31, 1945 at 1945 period prices

	Gross	Percent	Net
1. Original Cost.....	\$1,768,707	41.72	\$737,905
2. Reproduction Cost—New (84% of 1947 Period).....	2,470,746	58.28	1,439,951
3. Total.....	4,239,453	100.00	2,177,856
4. Condition Percent (60.33).....			1,313,900
5. % Going Concern and Other Elements of Value.....			78,534
6. Land.....			1,579
7. Rights-of-Way.....			12,402
8. Working Capital.....			113,196
9. Final Value.....			1,526,000

TIDAL PIPE LINE COMPANY,

Tulsa 2, Oklahoma, September 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Colum-

bia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1947:

1. Valuation as of December 31, 1946—Used as earnings basis -----	\$1,561,000.00
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P") -----	380,010.33
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes) -----	8,162.96
4. Net earnings from Transportation and other common carrier services -----	371,847.37
5. 7% of Valuation of Common Carrier Property -----	109,270.00
6. Excess earnings transferred to Special Surplus Account -----	262,577.37

Dividends Paid During Year

Dividends paid to stockholders:

1. From earnings on Transportation and Other Common Carrier Services (Earned subsequent to January 1, 1942)

(a) From current year's allowable earnings -----	75,000.00
(b) From prior year's allowable earnings -----	

2. From earnings made prior to January 1, 1942:

(a) From Balance in Surplus January 1, 1942 -----	
(b) From Depreciation Reserve Adjustment -----	

Total Dividends paid to stockholders ----- 75,000.00

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. Broome,
Y. P. BROOME, *Secretary.*

cc: Interstate Commerce Commission, Attn: Mr. W. P. Bartel, Secretary, Washington 25, D.C.

301

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1946 at 1947 period prices

	Original cost	Cost of reproduction new	Cost of reproduction less depreciation	Condition percent
SUMMARY—OWNED AND USED				
(Excluding Land and Rights-of-Way)				
Val. Sec. 1-G Conroe Gathering.....	\$214,342	\$360,650	\$100,900	50.78
Val. Sec. 2-G East Texas Gathering.....	603,585	978,882	544,223	55.60
Val. Sec. 1-T Conroe, Texas Trunk Line.....	225,853	308,474	245,486	61.61
Val. Sec. 1-3-T East Texas Main Line.....	756,964	1,192,071	746,850	92.63
	1,800,644	2,963,047	1,736,177	58.86
SUMMARY—USED—NOT OWNED				
(Excluding Land and Rights-of-Way)				
Val. Sec. 4-T East Texas Main Line.....	6,840	19,954	11,978	60.03
Total Used.....	1,807,484	2,983,001	1,748,155	58.63

Estimated final valuation as of December 31, 1946 at 1946 period prices

	Gross	Percent	Net
1. Original Cost.....	\$1,807,484	40.51	\$732,212
2. Reproduction Cost—New (89% of 1947 Period).....	2,624,871	89.49	1,879,383
3. Total.....	4,432,355	100.00	2,611,595
4. Condition Percent (58.60).....			1,354,896
5. 6%—Going Concern Value.....			81,276
6. Land.....			1,579
7. Rights-of-Way.....			18,103
8. Working Capital.....			105,447
9. Final Value.....			1,561,000

302

TIDAL PIPE LINE COMPANY,

Tulsa 2, Oklahoma, September 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al, District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the

224 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

defendant common carriers referred to therein, for the year 1948:

1. Valuation as of December 31, 1947—Used as earnings base-----	\$1,664,365.00
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P")-----	401,889.00
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)-----	16,089.39
4. Net earnings from Transportation and other Common Carrier Services-----	385,820.61
5. 7% of Valuation of Common Carrier Property-----	116,505.55
6. Excess earnings transferred to Special Surplus Account-----	269,315.06

Dividends Paid During Year

Dividends paid to stockholders:

1. From earnings on Transportation and Other Common Carrier Services (Earned subsequent to January 1, 1942):	
(a) From current year's allowable earnings-----	81,834.55
(b) From prior year's allowable earnings-----	18,165.45
2. From earnings made prior to January 1, 1942:	
(a) From Balance in Surplus January 1, 1942-----	-----
(b) From Depreciation Reserve Adjustment-----	-----

Total Dividends paid to stockholders-----	100,000.00
---	------------

Very truly yours,

TIDAL PIPE LINE COMPANY,

By Y. P. Broome,

Y. P. BROOME, *Secretary*.

cc: Interstate Commerce Commission, Attn: Mr. W. P. Bartel; Secretary, Washington 25, D.C.

303

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1947 at 1947 period prices

	Original cost	Cost of reproduction new	Cost of reproduction less depreciation	Condition percent
SUMMARY—OWNED AND USED (Excluding Land and Rights-of-Way)				
Val. Sec. 1-G Conroe Gathering.....	\$307,701	\$369,581	\$186,029	47.75
Val. Sec. 2-G East Texas Gathering.....	612,639	980,895	527,369	53.75
Val. Sec. 1-T Conroe, Texas Trunk Line.....	225,581	400,848	241,896	60.35
Val. Sec. 1-3-T East Texas Main Line.....	766,379	1,194,810	723,423	60.55
	1,812,300	2,666,134	1,678,717	56.60
SUMMARY—USED—NOT OWNED (Excluding Land and Rights-of-Way)				
Val. Sec. 4-T East Texas Main Line.....	6,840	19,954	11,374	57.00
Total Used	1,819,140	2,686,088	1,690,091	56.62

Estimated final valuation as of December 31, 1947 at 1947 period prices

	Gross	Percent	Net
1. Original Cost (Less Land and R.O.W.).....	\$1,819,140	37.85	\$688,544
2. Reproduction Cost—New (100% of 1947 Period).....	2,686,088	62.15	1,845,854
3. Total	4,806,228	100.00	2,544,398
4. Condition Percent (56.62).....			1,440,638
5. 65% Going Concern Value.....			86,169
6. Land.....			1,579
7. Rights-of-Way.....			17,579
8. Working Capital.....			118,160
9. Final Value			1,664,365

304

TIDAL PIPE LINE COMPANY

*Comparison of reported and revised valuations used as earnings basis
years 1941 through 1947 inclusive*

	Valuation used as earnings basis		7 percent of valuation	
	As reported	As revised	As reported	As revised
Report for 1948 on 1947 Valuations.....	\$1,301,711.00	\$1,664,365.00	\$91,120.11	\$116,506.00
Report for 1947 on 1946 Valuations.....	1,307,467.00	1,561,000.00	91,523.00	109,270.00
Report for 1946 on 1945 Valuations.....	1,118,538.00	1,526,000.00	78,297.66	106,820.00
Report for 1945 on 1944 Valuations.....	1,188,332.00	1,439,000.00	83,183.00	100,730.00
Report for 1944 on 1943 Valuations.....	1,188,513.00	1,402,000.00	83,195.91	98,140.00
Report for 1943 on 1942 Valuations.....	1,282,803.00	1,408,000.00	89,796.21	98,560.00
Report for 1942 on 1941 Valuations.....	1,329,374.00	1,370,000.00	93,056.18	95,900.00
	8,716,738.00	10,370,365.00	610,172.07	725,926.00
		8,716,738.00		610,172.07
Additional Valuation Used as Earnings Basis.....		1,653,627.00		
Additional Available Dividends.....				115,753.93

305

Exhibit D to motion

TIDAL PIPE LINE COMPANY;

Tulsa 2, Oklahoma, September 10, 1953.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, we are submitting revised reports made in behalf of the Tidal Pipe Line Company for the years 1949 through 1952 inclusive. These have been prepared to conform with the Interstate Commerce Commission's Tentative Valuation Reports for 1948 through 1951 inclusive, dated June 3, 1953.

A summary is attached showing that as a result of the revised valuations for this period the allowable dividends for the same period are increased \$15,720.

Very truly yours,

TIDAL PIPE LINE COMPANY,

By Y. P. Broome,

Y. P. BROOME, *Secretary.*

cc: Interstate Commerce Commission, Attn: Mr. George W. Laird, Acting Secretary, Washington 25, D.C.

Attachments to Exhibit D

306

TIDAL PIPE LINE COMPANY

Comparison of reported and revised valuations used as earnings basis
years 1948 through 1951

	Valuation used as earnings basis		7 percent of valuation	
	As reported	As revised	As reported	As revised
Report for 1952 on 1951 Valuations.....	\$1,842,454	\$1,842,264	\$128,972	\$128,958
Report for 1951 on 1950 Valuations.....	1,761,220	1,807,464	123,285	126,522
Report for 1950 on 1949 Valuations.....	1,852,588	1,887,864	129,681	132,150
Report for 1949 on 1948 Valuations.....	1,809,000	1,952,264	126,630	136,658
	7,265,262	7,489,856	508,568	524,288
		7,265,262		508,568
Additional Valuation Used as Earnings Basis.....		224,504		
Additional Available Dividends.....				15,720

307

TIDAL PIPE LINE COMPANY,

Tulsa 2, Oklahoma, September 10, 1953.

ATTORNEY GENERAL OF THE UNITED STATES

Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1949:

1. Valuation as of December 31, 1948—Used as earnings basis.	\$1,952,264
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P").....	192,410
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes).....	17,919
4. Net earnings from Transportation and other common carrier services.....	174,491
5. 7% of valuation of common carrier property.....	136,658
6. Excess earnings transferred to special Surplus Account.....	37,833

228 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

Dividends Paid During Year

Dividends paid to stockholders from transportation and other common carrier services:

(a) From current year's earnings.....\$105,000
(b) From prior year's earnings.....10,000

Total dividends paid to stockholders.....115,000

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. Broome,
Y. P. BROOME, Secretary.

cc: Interstate Commerce Commission, Attn: Mr. George W. Laird, Acting Secretary, Washington 25, D.C.

308.

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1948 at 1948 period prices

State	Original cost.	Cost of reproduction		
		New	Less depreciation	Condition percent
SUMMARY—OWNED AND USED (Excluding Land and Rights-of-Way)				
Oklahoma.....	\$124,120	\$118,847	\$118,847	100.00
Texas.....	1,906,420	3,213,953	1,797,545	55.93
	1,990,758	3,332,800	1,916,396	57.50
SUMMARY—USED—NOT OWNED (Excluding Land and Rights-of-Way)				
Texas.....	81,659	154,385	77,194	50.00
Total used.....	2,072,417	3,487,185	1,993,590	57.17

Estimated final value as of December 31, 1948 at 1948 period prices

	Gross	Percent	Net
1. Original Cost.....	\$2,072,417	37.28	\$1,322,597
2. Reproduction Cost.....	3,487,185	62.72	2,167,162
3. Total.....	5,559,602	100.00	2,989,759
4. Depreciated Value (57.17%).....			1,692,694
5. Going Concern and Other Elements of Value.....			101,920
6. Land.....			1,835
7. Rights-of-Way.....			20,615
8. Working Capital.....			135,909
9. Final Value.....			1,902,294

309

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 10, 1953.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1950:

1. Valuation as of December 31, 1949—Used as earnings basis—	\$1,887,864
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P")—	244,676
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)—	18,579
4. Net earnings from Transportation and other common carrier services—	226,097
5. 7% of valuation of common carrier property—	132,150
6. Excess earnings transferred to Special Surplus Account—	93,947

Dividends Paid During Year

Dividends paid to stockholders from transportation and other common carrier services:

(a) From current year's earnings—	62,598
(b) From prior year's earnings—	137,402

Total dividends paid to stockholders— 200,000

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. Broome,
Y. P. BROOME, *Secretary*.

cc: Interstate Commerce Commission, Attn: Mr. George W. Laird, Acting Secretary, Washington 25, D.C.

230 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

310

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1949 at 1949 period prices

State	Original cost	Cost of reproduction		
		New	Less depreciation	Condition percent
SUMMARY—OWNED AND USED				
(Excluding Land and Rights-of-Way)				
Oklahoma	\$143,346	\$137,281	\$129,225	94.13
Texas	1,913,418	3,248,683	1,769,291	54.46
	2,056,764	3,385,964	1,898,516	56.07
SUMMARY—USED—NOT OWNED				
(Excluding Land and Rights-of-Way)				
Texas	81,659	154,385	74,167	48.04
Total used	2,138,423	3,540,349	1,972,683	55.72

Estimated final value December 31, 1949 at 1949 period prices

	Gross	Percent	Net
1. Original Cost	\$2,138,423	37.66	\$805,330
2. Reproduction Cost	3,540,349	62.31	2,207,054
3. Total	5,678,772	100.00	3,012,384
4. Depreciated Value (55.72%)			1,678,500
5. Going Concern and Other Elements of Value			101,158
6. Land			1,835
7. Rights-of-Way			20,271
8. Working Capital			86,100
9. Final Value			1,887,864

311

TIDAL PIPE LINE COMPANY,

Tulsa 2, Oklahoma, September 10, 1953.

ATTORNEY GENERAL OF THE UNITED STATES,

Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is



made in behalf of Tidal Pipe Line Company, one of the defendant-common carriers referred to therein, for the year 1951:

1. Valuation as of December 31, 1950—Used as earnings basis—	\$1,807,464
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P")—	245,882
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)—	21,922
4. Net earnings from transportation and other common carrier services—	223,960
5. 7% of valuation of common carrier property—	128,522
6. Excess earnings transferred to Special Surplus Account—	97,438

Dividends Paid During Year

Dividends paid to stockholders from transportation and other common carrier services:

(a) From current year's earnings—	82,917
(b) From prior year's earnings—	87,083

Total dividends paid to stockholders— 150,000

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. Broome,
Y. P. BROOME, *Secretary.*

cc: Interstate Commerce Commission, Attn: Mr. George W. Laird, Acting Secretary, Washington 25, D.C.

TIDAL PIPE LINE COMPANY

*Estimated valuation of properties as of December 31, 1950
at 1950 period prices*

State	Original cost	Cost of reproduction		
		New	Less depreciation	Condition percent
SUMMARY--OWNED AND USED				
(Excluding Land and Rights-of-Way)				
Oklahoma.....	\$70,341	\$65,765	257,000	37.68
Texas.....	1,960,306	3,279,223	1,747,145	53.28
	2,030,647	3,344,988	1,804,805	53.96
SUMMARY--USED--NOT OWNED				
(Excluding Land and Rights-of-Way)				
Texas.....	136,289	256,587	120,737	47.00
Total Used:.....	2,166,936	3,601,575	1,925,543	53.46

Estimated final value December 31, 1950 at 1950 period prices

	Gross	Percent	Net
1. Original Cost.....	\$2,166,936	37.56	\$813,901
2. Reproduction Cost.....	3,601,575	62.44	2,349,011
3. Total.....	5,768,511	100.00	3,062,912
4. Depreciated Value (53.46%).....			1,637,433
5. Going Concern and Other Elements of Value.....			98,957
6. Land.....			2,140
7. Rights-of-Way.....			18,034
8. Working Capital.....			50,900
9. Final Value.....			1,807,464

TIDAL PIPE LINE COMPANY,

Tulsa 2, Oklahoma, September 10, 1953.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1952:

UNITED STATES VS. ATLANTIC REFINING CO. ET AL. 233

1. Valuation as of December 31, 1951—Used as earnings basis—	\$1,842,264
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P")—	167,626
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)—	22,706
4. Net earnings from transportation and other common carrier services—	144,920
5. 7% of Valuation of Common Carrier Property—	128,958
6. Excess earnings transferred to Special Surplus Account—	15,962

Dividends Paid During Year

Dividends paid to stockholders from transportation and other common carrier services:

(a) From current year's earnings—	109,632
(b) From prior year's earnings—	40,368

Total dividends paid to stockholders— 150,000

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. Broome,
Y. P. BROOME, Secretary.

cc: Interstate Commerce Commission, Attn: Mr. George W. Laird, Acting Secretary, Washington 25, D.C.

314

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1951
at 1951 period prices

State	Original cost	Cost of reproduction		
		New	Less depreciation	Condition percent
SUMMARY—OWNED AND USED (Excluding Land and Rights-of-Way)				
Oklahoma.....	\$71,235	\$66,141	\$57,008	82.50
Texas.....	2,001,253	2,427,516	1,773,136	81.73
	2,072,488	2,493,657	1,830,174	82.34
SUMMARY—USED—NOT OWNED (Excluding Land and Rights-of-Way)				
Texas.....	125,289	256,667	119,300	46.44
Total Used.....	2,208,777	2,750,324	1,949,483	81.94

Estimated final value December 31, 1951 at 1951 period prices

	Gross	Percent	Net
1. Original Cost.....	\$2,208,777	37.05	\$818,352
2. Reproduction Cost.....	3,753,544	62.95	2,362,856
3. Total.....	5,962,321	100.00	3,181,208
4. Depreciated Value (51.94%).....			1,652,319
5. Going Concern and Other Elements of Value.....			99,560
6. Land.....			2,140
7. Rights-of-Way.....			17,545
8. Working Capital.....			70,700
9. Final Value.....			1,842,264

315

Exhibit E to Motion

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 27, 1954.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, we are submitting revised report made in behalf of the Tidal Pipe Line Company for the year 1953. This has been prepared to conform with the Interstate Commerce Commission's Tentative Valuation Report for 1952 dated April 6, 1954.

As a result of the revised valuation for this period the allowable dividend has been reduced by \$1,266 as shown by the following:

	Valuation used as earnings basis	7 percent of valuation
Report for 1953 on 1952 Valuation:		
As Reported.....	\$1,792,938	\$125,506
As Revised.....	1,774,864	124,240
	-18,074	-1,266

Very truly yours,

TIDAL PIPE LINE COMPANY,
By K. G. Bandelier,
K. G. BANDELIER, *Secretary*.

cc: Interstate Commerce Commission, Attn: Mr. George W. Laird, Secretary, Washington 25, D.C.

316

Attachment to Exhibit E

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 27, 1954.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein; for the year 1953:

1. Valuation as of December 31, 1952—Used as earnings basis... \$1,774,864
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P") 163,964
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes) 22,936
4. Net earnings from Transportation and other common carrier services 143,028
5. 7% of Valuation of Common Carrier Property 124,240
6. Excess earnings transferred to Special Surplus Account... 18,788

Dividends Paid During Year

Dividends paid to stockholders from transportation and other common carrier services:

(a) From current year's earnings.....	\$114, 940
(b) From prior year's earnings.....	150, 000
Total dividends paid to stockholders.....	150, 000

Yours very truly,

TIDAL PIPE LINE COMPANY,
By K. G. Bandelier,
K. G. BANDELIER, *Secretary.*

cc: Interstate Commerce Commission, Attn: Mr. George W. Laird, Secretary, Washington 25, D.C.

317 In the United States District Court for the
District of Columbia

[File endorsement omitted.]

Civil Action No. 14069

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

Response of Tidal Pipe Line Company and Tidewater Oil Company to Plaintiff's "motion for order for carrying out the final judgment entered in the above cause on December 23, 1941"

Filed January 20, 1958

Tidal Pipe Line Company and Tidewater Oil Company (the latter formerly known as Tide Water Associated Oil Company), sometimes called herein Tidal and Tidewater, respectively, or defendants, collectively, for their answer to the above motion of plaintiff filed against them on October 11, 1957, respectfully represent:

FIRST DEFENSE

1. These defendants admit the allegations of paragraphs numbered 1 through 10, inclusive, of said motion, except they deny that the allegation in paragraph 7 that the valuation upon which the defendant carrier's permissible dividend to

the shipper-owner is calculated is limited to the valuation of property "owned and used" by the carrier for common carrier purposes is a correct and complete statement and construction of the true meaning and intendment of the provisions of the judgment. Defendants allege that the meaning of the words "owned and used" is a matter for decision upon this motion and that said words, within the context of the judgment, include and were intended to include, as a part of the valuation upon which the defendant carrier's permissible dividend to the shipper-owner is to be calculated, the valuation of leased property used by the carrier for common carrier purposes.

318 2. Defendants deny the allegations of paragraph 11.

3. Answering paragraph 12, defendants admit that Tidal, in computing the permissible 7% dividend to its shipper-owner, Tidewater, included as an item of its valuation of property used for common carrier purposes property used but not owned, but defendants deny that this was in violation of paragraph III(a) of the said judgment or of any other provisions of said judgment. Defendants admit the correctness of the tabulation in paragraph 12, and allege the "Difference" column represents the valuation of leased property used by Tidal for common carrier purposes. Defendants further allege that the valuation of said leased property was properly included by Tidal in the basis upon which it computed the shipper-owner's dividend, and that Tidal used in computing its permissible dividend the final value as determined by the Interstate Commerce Commission of properties owned or used by Tidal for rate-making purposes.

4. Defendants admit the allegations of the first two subparagraphs of paragraph 13 of the motion.

Answering the allegations in the third subparagraph of paragraph 13 of the said motion, defendants admit that the Interstate Commerce Commission issued a valuation report for Tidal as of December 31, 1947, and thereafter annually issued valuation reports for each subsequent year. Defendants admit that in such reports the Interstate Commerce Commission reported the valuation of property both owned and used by Tidal for common carrier purposes; defendants further aver, however, that the said valuation reports issued by the Interstate Commerce Commission contained additionally a final valuation of properties used by Tidal as a common car-

rier but not owned. Defendants deny that Tidal was required to use only the valuation of the properties which were *both* owned and used for the purpose of computing allowable
 319 dividends, and allege that Tidal was permitted to use for such purpose the final valuations of properties owned or used by such common carrier, as found by the Interstate Commerce Commission for rate-making purposes, and that such valuation includes properties used for common carrier purposes, but not owned by the carrier. Defendants therefore deny that Tidal's method of computing permissible dividends was in violation of paragraph III of the judgment and further deny that the calculations that appear in paragraph 13 of the said motion are correct.

5. Defendants deny each and every allegation of paragraph 14, except that they admit that for the calendar years 1948 through 1953 Tidal calculated its permissible 7% dividend to its shipper-owner on a basis which included property used by it for common carrier purposes but not owned by it, and that as the result of such method of calculation its reported permissible 7% dividends were increased in the amounts shown in the table in paragraph 14(B), if Tidal had omitted from its valuations property used but not owned; but defendants further allege that the method of calculation, the reports and dividends paid were permitted by, and in accordance with, the judgment.

SECOND DEFENSE

6. Defendants aver that pursuant to Paragraph III(a) ² of the said judgment the valuations to be used in computing permissible dividends to shipper-owners are those used by the Interstate Commerce Commission for rate purposes, and that same include property used but not owned for common carrier purposes, and in support thereof these defendants show:

320 A. The Interstate Commerce Act (U.S.C.A., Title 49, Chapter 1, Section 19-A) provides "the Commission shall investigate, ascertain and report the *value of all property owned or used*"; by the common carriers subject to Commission jurisdiction. [Emphasis added.]

² (a) Valuation as hereinabove used shall mean the latest final valuation of each common carrier's property owned and used for common carrier purposes as made by the Interstate Commerce Commission.

B. On the basis of the words "owned or used" in the above Act, the Interstate Commerce Commission in valuing the properties of carriers, has consistently included both property owned and property used though not owned.

C. The latest and only valuation by the Commission of Tidal's common carrier properties, prior to entry of the agreed judgment in this cause, was made in 1939, determining such valuation as of December 31, 1934. The Commission's report of such valuation contains the following statement:

"FINAL VALUE.—After careful consideration of all facts herein contained, including appreciation, depreciation, going-concern value, working capital, and all other matters which appear to have a bearing upon the values here reported, the values, for rate-making purposes, as of December 31, 1934, of the property *owned or used* by the carrier, are found to be as follows." [Emphasis added.]

Following the above quotation, the report contains a tabulation of the final value. The last figure in the "Final Value" tabulation is \$2,001,002.00, which includes \$2,000,000.00 of property owned and used and \$1,002.00 of property used but not owned.

D. The agreed judgment herein provides in Paragraph III (a) that to the latest final valuation of the Interstate Commerce Commission shall be added the value of additions and betterments to the common carrier property made after the date of such final valuation. Pursuant thereto, the defendant, Tidal, in its annual reports to the Attorney General made under Paragraph VIII of the agreed judgment, for each of the calendar years 1942 through 1948, estimated the value of its
321 common carrier properties as of December 31 of each preceding year including when applicable valuations on property used but not owned, based upon the valuation by the Commission as of December 31, 1934, but such valuations were only defendant's best estimates without definite directions having been provided by the Commission as to how such valuations were to be determined.

E. The first valuation by the Commission of Tidal's common carrier property after entry of the agreed judgment was on December 16, 1949, determining such valuation as of December 31, 1947. In its report of this valuation, as in the case of the previous one in 1939, as of December 31, 1934, the Commission in its "Final Value" figure included as an item thereof the value of property used but not owned. The final value as

stated in said report was \$1,664,365.00, which included \$6,874.00 as the value of property used but not owned.

F. It became obvious that based upon the methods and the prices used by the Commission in its valuation as of December 31, 1947, Tidal, in its annual reports to the Attorney General for the calendar years 1942 through 1948, had understated the value of its properties as of December 31 of each preceding year. Therefore, on September 25, 1950, Tidal completed and furnished to the Attorney General revised reports of the valuation of its properties for each of said years 1942 through 1948, and on the basis of such revised valuations computed and stated therein the amount of the permissible 7% dividends to its shipper-owner, Tidewater. In each of said revised reports the value of its property used but not owned was set forth as one factor in computing the amount of such permissible 7% dividends. These valuations were in conformity with the methods used by the Commission in its valuation of Tidal's properties as of December 31, 1947.

G. Thereafter, based upon and in conformity with the Commission's methods of valuation as of December 31, 1947, Tidal made its annual reports to the Attorney General for the calendar years 1948, 1949, 1950, 1951, 1952 and 1953, copies of which are attached hereto as Exhibits "A" to "F" inclusive, and in each of said reports stated the permissible 7% dividend and that in computing the same the value of property used but not owned was one factor used in determining the amount of such dividends.

H. Defendants aver that the following is a schedule correctly reflecting dividends permitted and paid for the years shown, the cumulative amount earned and withheld for the year shown and for prior years:

Year	Annual earnings	7% of ICC final valuation of property owned or used ¹	Dividends paid	Cumulative dividends earned and withheld
1947				\$100,256
1948	\$385,827	\$116,506	\$100,000	125,772
1949	174,491	136,658	115,000	147,430
1950	228,097	132,150	200,000	79,540
1951	223,960	126,322	150,000	56,102
1952	144,920	128,955	150,000	35,060
1953	143,028	124,240	150,000	9,300

¹ Plaintiff recognizes this sum as being the correct amount earned and withheld as of December 31, 1947. See paragraph 13 of Plaintiff's Motion.

The foregoing schedule clearly reflects that Tidal at no time during the above years paid to Tidewater any sum of money in the form of dividend or otherwise that exceeded the amount of the dividends earned and withheld.

THIRD DEFENSE

7. Defendants allege that the United States through its Attorney General tacitly and by conduct has approved the construction that the valuations upon which Tidal's permissible dividend to its shipper-owner is calculated include the valuation of property used or owned by the carrier for common carrier purposes, through its acquiescence in such a construction over a long period of time. In support thereof these defendants show:

323 A. The Interstate Commerce Act provides [Section 19(h)] that the Attorney General shall be furnished with copies of all valuations by the Commission, with an opportunity to protest same before the valuation is made final.

Each of the Interstate Commerce Commission reports filed with the Attorney General of the United States provided that if protest was not filed with the Secretary of the Commission against the findings in the said report that the report will be the report of the Commission and the valuation as found therein will be final. Each period of time during which the Attorney General of the United States could have filed its protest against the findings of each report of the Interstate Commerce Commission has expired and for all intents and purposes the valuations reported by the Commission are final.

B. A copy of the valuation report referred to in Paragraph 6(C) of this reply was furnished by the Interstate Commerce Commission to the Attorney General of the United States prior to February 9, 1939 (Interstate Commerce Commission—Valuation Docket No. 1234, Tidal Pipe Line Company). As shown above, these reports included property used but not owned. Annual reports after the 1947 valuation referred to above were likewise filed by the Interstate Commerce Commission with the Attorney General, which reports included property used but not owned.

C. That prior to March 10, 1954, no objection, protest, criticism or question with respect to any of the reports filed with the Attorney General by the Interstate Commerce Commission or any of the annual reports filed with the Attorney General by

Tidal (as required by said judgment) was made by the
 324 Attorney General on the ground that valuations of property used but not owned were erroneously included therein. To the contrary, from 1942 to March 10, 1954, the Attorney General accepted without protest or question of any nature all such reports filed by the Interstate Commerce Commission or by Tidal, which such reports plainly showed that valuations were made of properties used but not owned by Tidal in its common carrier operations.

D. The Attorney General on March 10, 1954,² acting through the Assistant Attorney General, the Honorable Stanley Barnes, for the first time questioned whether it was proper under the judgment for the defendant, Tidal, to include the value of property used but not owned in its report for the calendar year 1953. A copy of that letter is attached as Exhibit "G".

Defendant, Tidal, through its secretary, Y. P. Broome, Esq., who was also attorney at law and counsel for defendants, answered said letter under date of April 8, 1954, stating in substance it considered that under the language of the judgment it was proper to include in its annual reports the value of property used but not owned in computing the amount of the permissible 7% dividends to Tidewater. A copy of that letter is attached as Exhibit "H".

Tidal received no reply to its letter, Exhibit "H" above, and in its annual report to the Attorney General for the year 1954, due by April 15, 1955, Tidal again included as part of the valuation of its properties for determining the amount of the permissible 7% dividend properties used but not owned, all in accordance with the report filed with the Attorney General by the Interstate Commerce Commission in 1955.

E. On September 19, 1955, the Attorney General,
 325 acting again through Honorable Stanley W. Barnes, called to Tidal's attention that it was using in its valuations properties used but not owned by Tidal in its common carrier operations. A copy of such letter is attached as Exhibit "I". On October 20, 1955, Tidal responded to this letter, Exhibit "I", and referred to Tidal's previous letter, Exhibit "H", which had gone unanswered, and requested that this latter letter be reviewed and that Tidal be advised as to the Attorney

² The letter is dated March 10, 1953, but the contents thereof and the references therein show clearly that it was written and should properly have been dated March 10, 1954.

General's position on the questions raised therein. Tidal's letter of October 20, 1955, above referred to is attached hereto as Exhibit "J".

Tidal's letter of October 20, 1955, went unanswered, and in its annual report for the years 1955 and 1956 Tidal, continuing to believe in the correctness of its interpretation of the judgment, again included as part of the valuation of its properties for determining the amount of the permissible 7% dividend properties used but not owned.

F. No further communication was received from the Attorney General until September 25, 1957, the date of receipt of the telegram (attached hereto as Exhibit "K"), approximately two (2) years after the Attorney General's last correspondence and one (1) year after the annual report for 1955 had apparently been accepted by the Attorney General. Tidal, immediately upon receipt of such telegram of September 25, 1957, responded to such telegram by a wire, attached hereto as Exhibit "L".

Thus it was not until October, 1957, approximately sixteen (16) years after the entry of the consent decree, that the United States affirmatively accused these defendants of violation of the consent decree in their interpretation and construction thereof.

326 G. In view of the allegations set forth in this paragraph 7 of this reply, the words "owned and used" in Paragraph III(a) of the agreed judgment mean and were intended to mean and have been construed and acquiesced in by these parties to the judgment to have the same meaning as have the words "owned or used" in the Interstate Commerce Act; that as used in said Act, the words "used or owned" have been consistently construed by the Commission and by Tidal as including property *both* owned *and* used and property used even though not owned; and that both the plaintiff and the defendants, Tidal and Tidewater, for many years by their course of conduct so construed the words "owned and used" in the agreed judgment; that that construction is correct and should not be changed after this long period of interpretation by the parties herein at all times from the entry of the judgment in 1941 until shortly prior to the filing of plaintiff's motion herein.

FOURTH DEFENSE

8. As a fourth defense, defendants allege that with respect to the matters complained of by the plaintiff they, and each

of them, have at all times acted honestly and in good faith and have at all times openly and fully disclosed to plaintiff the basis upon which valuations and calculations of permissible 7% dividends were made. Defendants at all times believed, and now believe, they were acting in conformity with the judgment, and any and all dividends paid or received were believed to be permitted by the judgment. From the time the judgment was entered in 1941, and until 1954, when plaintiff first questioned Tidal with respect to the correctness of its interpretation of that portion of the judgment at issue here, defendants had no reason to believe their interpretation was disputable. Since the question was raised, and in the absence
 327 of any definitive reply by plaintiff to Tidal's letters of April 8, 1954 and October 20, 1955, hereinabove referred to, Tidal not only has paid no dividends in respect of earnings based upon valuation of property used for common carrier purposes but not owned by it but has maintained in its "Dividends Earned & Withheld Account" funds in excess of the sums here at issue. In all respects defendants deny that they, or either of them, have knowingly violated the judgment, and they allege that their interpretation of the judgment is correct.

FIFTH DEFENSE

9. As a fifth defense, defendant aver that the motion fails to state a cause of action upon which relief can be granted.

Wherefore, defendants Tidal and Tidewater pray that plaintiff's said motion be dismissed and that defendants have such other and further relief as the Court may deem just and proper.

Respectfully submitted.

Joseph P. Tumulty, Jr.,

JOSEPH P. TUMULTY, Jr.,

1317 F Street, NW, Washington 4, D.C., NA 8-2121,

Y. P. BROOME,

1354 East 23th Street, Tulsa, Oklahoma,

ROBERT O. KOCH,

P.O. Box 1404, Houston 1, Texas,

Attorneys for Tidal Pipe Line Company and Tidewater Oil Company.

328 [Duly sworn to by E. B. Müller, Jr.; jurat omitted in printing.]

329 [Duly sworn to by Lloyd Armstrong; jurat omitted in printing.]

330

Exhibit A to response

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1948:

1. Valuation as of December 31, 1947—Used as earnings base.	\$1,664,365.00
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P")	401,889.00
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)	16,089.39
4. Net earnings from Transportation and other Common Carrier Services	385,820.61
5. 7% of Valuation of Common Carrier Property	116,505.55
6. Excess earnings transferred to Special Surplus Account	269,315.06

Dividends paid during year

Dividends paid to stockholders:

1. From earnings on Transportation and Other Common Carrier Services (Earned subsequent to January 1, 1942):

(a) From current year's allowable earnings	\$1,824.55
(b) From prior year's allowable earnings	18,165.45

2. From earnings made prior to January 1, 1942:

(a) From Balance in Surplus January 1, 1942	
(b) From Depreciation Reserve Adjustment	

Total Dividends paid to stockholders 100,000.00

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. BROOME, Secretary.

cc: Interstate Commerce Commission, Attn: Mr. W. P. Bartel, Secretary, Washington 25, D.C.

331

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1947 at 1947 period prices

	Original cost	Cost of reproduction new	Cost of reproduction less depreciation	Condition percent
SUMMARY—OWNED AND USED				
(Excluding Land and Rights-of-Way)				
Val. Sec. J-G Conroe Gathering	\$207,701	\$389,581	\$186,029	47.75
Val. Sec. 2-G East Texas Gathering	612,630	380,895	527,309	53.75
Val. Sec. 1-T Conroe, Texas Trunk Line	225,581	400,848	241,896	60.35
Val. Sec. 1-3-T East Texas Main Line	796,379	1,194,810	728,425	60.55
	1,842,300	2,066,134	1,678,717	56.60
SUMMARY—USED—NOT OWNED				
(Excluding Land and Rights-of-Way)				
Val. Sec. 4-T East Texas Main Line	6,840	19,954	11,374	57.00
Total Used	1,819,140	2,086,088	1,690,091	55.62

Estimated final valuation December 31, 1947 at 1947 period prices

	Gross	Percent	Net
1. Original Cost (Less Land and R.O.W.)	\$1,819,140	37.85	\$688,544
2. Reproduction Cost—New (100% of 1947 Period)	2,086,088	62.15	1,854,854
3. Total	4,806,228	100.00	2,544,398
4. Condition Percent (56.62)			1,440,638
5. 6% Going Concern Value			99,159
6. Land			1,679
7. Rights-of-Way			17,879
8. Working Capital			118,100
9. Final Value			1,664,385

332

Exhibit B to response

SEPTEMBER 10, 1953.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the

defendant common carriers referred to therein, for the year 1949:

1. Valuation as of December 31, 1948—Used as earnings basis—	\$1,952,264
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P")—	192,410
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)—	17,919
4. Net earnings from Transportation and other common carrier services—	174,491
5. 7% of valuation of common property—	136,658
6. Excess earnings transferred to Special Surplus Account—	37,833

Dividends paid during year

Dividends paid to stockholders from transportation and other common carrier services:

(a) From current year's earnings—	105,000
(b) From prior year's earnings—	10,000

Total dividends paid to stockholders— 115,000

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. BROOME, *Secretary*.

cc: Interstate Commerce Commission, Attn: Mr. George W. Laird, Acting Secretary, Washington 25, D.C.

333

TIDAL PIPE LINE COMPANY

*Estimated valuation of properties as of December 31, 1948
at 1948 period prices*

State	Original cost	Cost of reproduction		
		New	Less depreciation	Condition, percent
SUMMARY—OWNED AND USED (Excluding Land and Rights-of-Way)				
Oklahoma	\$124,129	\$118,847	\$118,847	100.00
Texas	1,866,029	3,213,965	1,797,949	55.93
	1,990,758	3,332,812	1,916,796	57.50
SUMMARY—USED BUT OWNED (Excluding Land and Rights-of-Way)				
Texas	\$1,659	154,385	77,194	50.00
Total Used	2,072,417	3,487,197	1,993,990	57.17

248 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

Estimated final value as of December 31, 1948 at 1948 period prices

	Gross	Percent	Net
1. Original Cost.....	52,072,417	37.28	\$772,597
2. Reproduction Cost.....	3,487,185	62.72	2,187,162
3. Total.....	5,859,602	100.00	2,959,759
4. Depreciated Value (67.17%).....			1,602,004
5. Going Concern and Other Elements of Value.....			101,920
6. Land.....			1,835
7. Rights-of-Way.....			26,415
8. Working Capital.....			135,800
9. Final Value.....			1,952,264

334

Exhibit C to response

SEPTEMBER 10, 1953.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1950:

1. Valuation as of December 31, 1949—Used as earnings basis.....	\$1,887,864
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P").....	244,676
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes).....	18,579
4. Net earnings from Transportation and other common carrier services.....	226,097
5. 7% of valuation of common carrier property.....	132,150
6. Excess earnings transferred to Special Surplus Account.....	93,947

UNITED STATES VS. ATLANTIC REFINING CO. ET AL. 249

Dividends paid during year

Dividends paid to stockholders from transportation and other common carrier services:

(a) From current year's earnings.....\$62,598
(b) From prior year's earnings.....137,402

Total dividends paid to stockholders.....200,000

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. BROOME, Secretary.

cc: Interstate Commerce Commission, Attn: Mr. George W. Laird, Acting Secretary, Washington 25; D.C.

335 TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1949
at 1949 period prices

State	Original cost	Cost of reproduction		
		New	Less depreciation	Condition, percent
SUMMARY—OWNED AND USED				
(Excluding Land and Rights-of-Way)				
Oklahoma.....	\$143,346	\$137,251	\$129,225	94.13
Texas.....	1,913,418	3,248,683	1,792,291	54.46
	2,056,764	3,385,934	1,921,516	56.47
SUMMARY—USED—NOT OWNED				
(Excluding Land and Rights-of-Way)				
Texas.....	81,659	154,385	74,167	48.04
Total Used.....	2,138,423	3,540,349	1,972,683	55.72

Estimated final value December 31, 1949 at 1949 period prices

	Gross	Percent	Net
1. Original Cost.....	\$2,138,423	37.06	\$805,330
2. Reproduction Cost.....	3,540,349	62.34	2,207,084
3. Total.....	5,678,772	100.00	3,012,384
4. Depreciated Value (55.72%).....			1,678,500
5. Going Concern and Other Elements of Value.....			101,158
6. Land.....			1,835
7. Rights-of-Way.....			29,271
8. Working Capital.....			86,100
9. Final value.....			1,887,904

SEPTEMBER 10, 1953.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1951:

1. Valuation as of December 31, 1950—Used as earnings basis—	\$1, 807, 464
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P")	245, 882
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)	21, 922
4. Net earnings from transportation and other common carrier services	223, 960
5. 7% of valuation of common property	126, 522
6. Excess earnings transferred to Special Surplus Account	97, 438

Dividends Paid During Year

Dividends paid to stockholders from transportation and other common carrier services:

(a) From current year's earnings	82, 917
(b) From prior year's earnings	67, 083

Total dividends paid to stockholders 150, 000

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. BROOME, Secretary.

cc: Interstate Commerce Commission, Attn: Mr. George W. Land, Acting Secretary, Washington 25, D.C.

337

TIDAL PIPE LINE COMPANY

*Estimated valuation of properties as of December 31, 1950
at 1950 period prices*

State	Original cost	Cost of reproduction		
		New	Less depreciation	Condition percent
SUMMARY—OWNED AND USED (Excluding Land and Rights-of-Way)				
Oklahoma.....	\$70,341	365,765	\$57,660	82.68
Texas: on	1,960,366	3,279,223	1,747,146	53.28
	2,030,647	3,344,938	1,804,806	53.96
SUMMARY—USED—NOT OWNED (Excluding Land and Rights-of-Way)				
Texas.....	125,289	256,887	120,737	47.00
Total Used.....	2,166,936	3,601,875	1,925,543	53.46

Estimated final value December 31, 1950 at 1950 period prices

	Gross	Percent	Net
1. Original Cost.....	\$2,166,936	37.56	\$813,901
2. Reproduction Cost.....	3,601,875	62.44	2,249,011
3. Total.....	5,768,811	100.00	3,062,912
4. Depreciated Value (53.46%).....			1,637,433
5. Going Concern and Other Elements of Value.....			98,987
6. Land.....			2,140
7. Rights-of-Way.....			18,034
8. Working Capital.....			50,900
9. Final Value.....			1,807,464

338

Exhibit E to response

SEPTEMBER 10, 1953.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the

252 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

defendant common carriers referred to therein, for the year 1952:

1. Valuation as of December 31, 1951—Used as earnings basis—	\$1, 842, 204
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P")—	167, 626
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)—	22, 706
4. Net earnings from transportation and other common carrier services—	144, 920
5. 7% of Valuation of Common Carrier Property—	128, 958
6. Excess earnings transferred to Special Surplus Account—	15, 962

Dividends Paid During Year

Dividends paid to stockholders from transportation and other common carrier services:

(a) From current year's earnings—	100, 632
(b) From prior year's earnings—	40, 368

Total dividends paid to stockholders— 150, 000

Very truly yours,

TIDAL PIPE-LINE COMPANY,
By Y. P. BROOME, *Secretary*.

cc: Interstate Commerce Commission, Attn: Mr. George W. Laird, Acting Secretary, Washington 25, D.C.

339

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1951 at 1951 period prices

State	Original cost	Cost of reproduction		
		New	Less depreciation	Condition percent
SUMMARY—OWNED AND USED (Excluding Land and Rights-of-Way)				
Oklahoma	\$71, 235	\$69, 141	\$57, 038	82.50
Texas	2, 001, 263	3, 427, 516	1, 773, 136	51.73
	2, 072, 498	3, 496, 657	1, 830, 174	52.34
SUMMARY—USED—NOT OWNED (Excluding Land and Rights-of-Way)				
Texas	136, 257	256, 887	119, 309	46.44
Total Used	2, 208, 777	3, 753, 544	1, 949, 483	51.94

Estimated final value December 31, 1951 at 1951 period prices

	Gross	Percent	Net
1. Original Cost.....	\$2,208,777	37.05	\$818,352
2. Reproduction Cost.....	3,753,544	62.95	2,362,836
3. Total.....	5,962,321	100.00	3,181,208
4. Depreciated Value (51.94%).....			1,632,319
5. Going Concern and Other Elements of Value.....			99,560
6. Land.....			2,140
7. Rights-of-Way.....			17,545
8. Working Capital.....			70,700
9. Final Value.....			1,842,264

340

Exhibit F to response

SEPTEMBER 27, 1954.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1953:

1. Valuation as of December 31, 1952—Used as earnings basis.....	\$1,774,864
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P").....	165,964
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes).....	22,936
4. Net earnings from Transportation and other common carrier services.....	143,028
5. 7% of Valuation of Common Carrier Property.....	124,240
6. Excess earnings transferred to Special Surplus Account.....	18,788

254 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

Dividends paid during year

Dividends paid to stockholders from transportation and other common carrier services:

(a) From current year's earnings.....\$114,940
(b) From prior year's earnings.....35,060

Total dividends paid to stockholders.....150,000

Yours very truly,

TIDAL PIPE LINE COMPANY,
By K. G. Bandelier,
K. G. BANDELIER, *Secretary*.

cc: Interstate Commerce Commission, Attn: Mr. George W. Laird, Secretary, Washington 25, D.C.

341

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1952 at 1952 period prices

State	Original cost	Cost of reproduction		
		New	Less depreciation	Condition percent
SUMMARY—OWNED AND USED (Excluding Land and Rights-of-Way)				
Oklahoma.....	\$81,353	\$79,445	\$63,502	79.93
Texas.....	2,046,497	3,596,461	1,772,634	50.55
	2,127,850	3,585,906	1,836,136	51.20
SUMMARY—USED—NOT OWNED (Excluding Land and Rights-of-Way)				
Texas.....	\$1,529	159,724	70,279	44.00
Total Used.....	2,209,379	3,745,630	1,906,415	50.90

Estimated final value December 31, 1952 at 1952 period prices

	Gross	Percent	Net
1. Original Cost.....	\$2,209,379	37.10	\$819,630
2. Reproduction Cost.....	3,745,630	62.90	2,356,001
3. Total.....	5,955,009	100.00	3,175,681
4. Depreciated Value (50.90).....			1,616,622
5. Going Concern and Other Elements of Value.....			97,384
6. Land.....			2,140
7. Rights-of-Way.....			17,018
8. Working Capital.....			41,909
9. Final Value.....			1,774,964

342

Exhibit G to response

UNITED STATES DEPARTMENT OF JUSTICE,
Washington 25, D.C., March 10, 1953.

Mr. Y. P. BROOME,
Secretary, Tidal Pipe Line Company, Box 731, Tulsa 2,
Oklahoma.

DEAR MR. BROOME: I wish to acknowledge receipt of your letter of March 1, 1954, addressed to the Attorney General, containing the 1953 report of your company filed pursuant to the terms of Paragraph VIII of the final judgment entered in the case of United States v. The Atlantic Refining Company et al., Civil Action No. 14060. This report is being made a part of the official records of this Department.

We note that in computing estimated valuation for the purposes of this judgment that you have included the value of properties used but not owned. We wish to call to your attention that Paragraph III(a) provides that valuation shall include only the common carrier property owned and used for common carrier purposes. We note that your valuation for December 31, 1952 includes depreciated value of property used by your company but owned by others, having an original cost of \$81,530 and a cost of reproduction new of \$159,724. It appears that you have included these properties in estimating valuations for each of the years since 1949.

Sincerely yours,

Stanley N. Barnes,
STANLEY N. BARNES,
Assistant Attorney General.

343

Exhibit H to response

TIDAL PIPE LINE COMPANY,
Tulsa, Oklahoma, April 8, 1954.

Honorable STANLEY N. BARNES,
Assistant Attorney General, Washington 25, D.C.

DEAR MR. BARNES: Thank you for your March 10th acknowledgment of receipt of our March 1st report to The Attorney General for 1953 (Your File SNB:WDK, 59-8-213).

The second paragraph of your letter calls attention to the fact that we include in our estimated valuation the value of properties used but not owned. Our valuations for our re-

port to The Attorney General have been the same as those published for Tidal Pipe Line Company by the Bureau of Valuation of the Interstate Commerce Commission.

It has consistently been the practice of the Bureau of Valuation in determining the valuation of pipe line common carrier properties to consider both property owned and property used, and we had assumed the judgment intended that valuations should conform to the methods used by the Interstate Commerce Commission. As a matter of fact, Section III, Paragraph (a), mentions the fact that the common carrier in bringing valuations to date shall do so "in accordance with the methods used by the Interstate Commerce Commission in bringing valuations to date, the classifications of property to conform to the uniform system of accounts for pipe lines prescribed by the Interstate Commerce Commission." The only exception is that the valuation shall not include facilities acquired from the excess earnings commonly referred to as "frozen surplus."

Obviously the leased facilities which the I.C.C. included in our valuation produce some earnings, and the question arises as to the status of such earnings if these facilities are not included in the valuations. We don't believe that The Attorney General considers that the valuation of the used but not owned facilities should be excluded and at the same time earnings on such facilities be considered in determining the amount of the so-called "frozen surplus."

While in the judgment the words "owned" and "used" are in the conjunctive, it would seem to me, considering the practice of the Interstate Commerce Commission, that the
344 conjunctive means both facilities that are owned and facilities that are used.

I will appreciate it if, upon further consideration of the matter, you would advise me further as to your position.

Yours very truly,

TIDAL PIPE LINE COMPANY,
(Original Signed),

By Y. P. Broome,
Y. P. BROOME, Secretary.

YPB—lb.

BCC Messrs. G. R. Kinter, E. K. Holbert.

345

Exhibit I. to response

UNITED STATES DEPARTMENT OF JUSTICE,
Washington, D.C., September 19, 1955.

Mr. Y. P. BROOME,
Tidal Pipe Line Company, Box 731, Tulsa, Oklahoma.

Re: *United States v. Atlantic Refining Company, et al.*

DEAR MR. BROOME: We again wish to call to your attention the practice of the Tidal Pipe Line Company of including in its valuation, upon which its shipper owner's dividend is calculated, the value of property used but not owned by your company. Paragraph III(a) of the Judgment provides that the final valuation of the carrier upon which the shipper owner's dividend is calculated shall be of property "owned and used" by the carrier. Your shipper owner does not have any investment in the property used but not owned by your company and therefore under the Judgment cannot receive a dividend limited to 7 percent of the valuation of such property.

Sincerely yours,

Stanley N. Barnes,
STANLEY N. BARNES,

Assistant Attorney General, Antitrust Division.

346

Exhibit J to response

TIDAL PIPE LINE COMPANY,
POST OFFICE BOX 1404,
Houston 1, Texas, October 20, 1955.

Honorable STANLEY N. BARNES,
Assistant Attorney General, Antitrust Division, Washington
25, D.C.

DEAR MR. BARNES: We acknowledge receipt of your letter of September 19, 1955 which again calls our attention to the practice of including in our valuation, the value of property used but not owned.

Your first letter on this subject was answered by our letter of April 8, 1954, a copy of which is attached. We received no reply to this letter, therefore we assume that it was overlooked in your office.

We ask that you review the correspondence on the subject and advise us as to your position on the questions raised in our letter of April 8, 1954.

Yours very truly,

TIDAL PIPE LINE COMPANY,
By George W. Good,
GEORGE W. GOOD,
Vice-President.

GWG:MH

BC: Mr. A. W. John, Mr. E. K. Holbert, Mr. Lloyd Armstrong.

347 *Exhibit K to response*

[Copy of wire telephone from Government Wire Service]

RE: The Atlantic Refining Company Pipe Line Decree

LLOYD ARMSTRONG:

On March 10, 1954, the Department called to the attention of the Tidal Pipe Line Company the fact that the Company, in computing its permissible dividend to its shipper-owner had included in its valuation basis the value of property used but not owned and had done so in violation of the judgment in the above case in each of the years since 1949. The company's reply of April 8, 1954, indicated that the company took a contrary view in regard to the meaning of the judgment in its amended report dated September 27, 1954. The company continued to include in its valuation base the value of property used but not owned. Again, for the second time, the Department on September 19, 1955, called the company's attention to this violation of the judgment. The company's reply of October 20, 1955, asked that we review the correspondence on this subject and advise the company as to the Department's position on the questions raised in the company's letter of April 8, 1954. This Department, after studying the matter, adheres to the position expressed in its prior letters. Does Tidal still adhere to the position expressed in its April 8, 1954 letter? If it does, and you would like to discuss the matter with us, please stipulate by return wire that you waive, for a 60-day period the statute of limitations.

VICTOR R. HANSON,
Assistant Attorney General,
Anti-Trust Division,
Justice Department, Washington, D.C.

348

Exhibit L to response

TIDEWATER OIL COMPANY

MR. VICTOR R. HANSON,
Assistant Attorney General, Anti-trust Division, Justice Department, Wash-
ington, D.C.

RE YOUR WIRE OF THIS DATE PERTAINING TO THE ATLANTIC REFINING COMPANY PIPE LINE DECREE. TIDAL PIPE LINE COMPANY ADHERES TO THE POSITION EXPRESSED IN ITS APRIL 8, 1964, AND OCTOBER 20, 1955 LETTERS. WOULD LIKE TIME TO REVIEW THIS MATTER FURTHER AND DISCUSS WITH YOU WITHIN THE NEXT SIXTY DAYS, AND THEREFORE, COMPANY AGREES TO WAIVE, FOR A PERIOD OF SIXTY DAYS, THE STATUTE OF LIMITATIONS. WILL APPRECIATE YOUR VIEWS AS TO HOW THIS MATTER MIGHT BE CONCLUDED.

LLOYD ARMSTRONG,
Tidal Pipe Line Company.

352 In United States District Court for the District of Columbia

Appendix

353 TIDAL'S ORIGINAL 1943 REPORT TO ATTORNEY GENERAL

DEPARTMENT OF JUSTICE,
Washington 25, D.C., April 22, 1944.

Mr. Y. P. BROOME,
Secretary, Tidal Pipe Line Company, Tulsa, Oklahoma.

DEAR SIR: This is to acknowledge receipt of your letter of April 6, 1944, addressed to the Attorney General, submitting the report of your company for the year 1943, as required by Paragraph VIII of the final judgment in the case of United States of America v. The Atlantic Refining Company, et al., Civil Action No. 14060. The report has been placed on file,

Very truly yours,

(S) Wendell Berge,
WENDELL BERGE,
Assistant Attorney General.

TIDAL PIPE LINE COMPANY,
Tulsa, Oklahoma, April 6, 1944.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1943:

1. Valuation used as earnings basis as of December 31, 1942, (Schedule attached)-----	\$1, 282, 803. 00
2. Total earnings from transportation and other common carrier services (line 37, Schedule 302, Annual Report Form "P")-----	285, 294. 63
3. Less earnings from sources other than from transportation and common carrier services:	
Interest on Bond investments-----	\$2, 472. 12
Less Federal and State Income Taxes--	1, 023. 12
	1, 449. 00
4. Net earnings from transportation and common carrier services-----	283, 845. 63
5. Dividends paid to stockholders from current year's earnings from transportation and other common carrier sources-----	75, 000. 00
6. 7% of valuation of common carrier property-----	89, 796. 21
7. Excess earnings transferred to Special Surplus Account--	194, 049. 42

Very truly yours,

TIDAL PIPE LINE COMPANY,
By **Y. P. BROOME, Secretary.**

355

TIDAL PIPE LINE COMPANY

Valuation used as earning basis December 31, 1942

	Cost of reproduction		
	Cost—new	Cost—less depreciation	Percent of cost—new
1. Total Valuation as of Dec. 31, 1942 (Excluding Overheads).....	\$2,335,553	\$1,354,691	
2. Less—Lands and Rights-of-Way.....	12,934	9,012	
3. Total Accounts 103-153 to 116-166 Inclusive.....	2,322,619	1,345,679	57.93
4. Engineering.....	23,226	13,456	
5. Total.....	2,345,845	1,359,135	
6. General Expenditures.....	35,187	20,387	
7. Total.....	2,381,032	1,379,522	
8. Interest During Construction.....	28,565	16,447	
9. Total.....	2,409,597	1,395,969	57.93
10. Book Cost (Excluding Land and Rights-of-Way).....	1,600,105		
11. Total.....	4,069,702		
12. One-half of Line 11.....	2,034,851	1,176,789	57.93
13. Land—Owned and Used.....	776	776	
14. Land—Used—Not Owned.....	741	741	
15. Rights-of-Way.....	23,958	14,996	
16. Working Capital.....	22,703	22,703	
17. Total Lines 12 to 16 Inclusive.....	2,062,029	1,218,005	
18. Going Concern Value 5.32%.....	110,817	64,798	
19. Final Valuation Used as Earning Basis.....	2,193,846	1,282,803	58.47

262 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

356 TIDAL'S ORIGINAL 1944 REPORT TO ATTORNEY
GENERAL

DEPARTMENT OF JUSTICE,
Washington 25, D.C., April 25, 1945.

Mr. Y. P. BROOME,
*Secretary, Tidal Pipe Line Company, P.O. Box 731, Tulsa 2,
Oklahoma.*

DEAR SIR: This is to acknowledge receipt of your letter of April 9, 1945 addressed to the Attorney General, transmitting the report of your company for the year 1944, as required by Paragraph VIII of the final judgment entered in the case of United States of America v. The Atlantic Refining Company, et al., Civil Action No. 14060. The report has been placed on file in the Department.

Very truly yours,

(S) Wendell Berge,
WENDELL BERGE,
Assistant Attorney General.

APRIL 9, 1945.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1944:

1. Valuation used as earnings basis as of December 31, 1943-----	\$1,188,513.00
2. Total Net Earnings (Line 37, Schedule 302, Annual Report Form "P")-----	342,927.00
3. Less earnings from sources other than from transportation and common carrier services:	
Interest on Bond investments-----	\$6,292.77
Less Federal and State Income Taxes-----	2,648.31
	<u>3,644.46</u>
4. Net earnings from transportation and common carrier services-----	339,283.44
5. Dividends paid to stockholders from current year's earnings from transportation and other common carrier services-----	75,000.00
6. 7% of valuation of common carrier property-----	83,195.91
7. Excess earnings transferred to Special Surplus Account.	<u>256,087.53</u>

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. BROOME, *Secretary*.

cc: Interstate Commerce Commission, Attention: Mr. W. P. Bartel, Secretary, Washington, D.C.

TIDAL PIPE LINE COMPANY

Valuation used as earnings basis as of December 31, 1943

	Trunk lines				Gathering lines				Total all lines		
	1-T-Conroe		T.E.T.-1-ST-East Texas		1-G-Conroe		1-G-East Texas		C.R.N.	C.R.N.D.	Percent C.R.N.D. to C.R.N.
	C.R.N.	C.R.N.D.	C.R.N.	C.R.N.D.	C.R.N.	C.R.N.D.	C.R.N.	C.R.N.D.			
1. Total Valuation as of Dec. 31, 1943 at 1934 Prices, excluding Overheads, Land & Rights-of-Way	\$246,680	\$160,455	\$717,885	\$370,343	\$221,017	\$110,677	\$568,100	\$310,007	\$1,753,692	\$951,987	
2. Adjustment of Item 1 to Current Price Basis	308,363	200,569	897,356	465,560	276,271	138,346	710,125	387,509	2,102,115	1,189,984	
3. Engineering	3,084	2,006	8,974	4,636	2,763	1,383	7,101	3,875	21,922	11,900	
4. Total	311,447	202,575	906,330	465,196	279,034	139,729	717,226	391,384	2,214,037	1,201,884	
5. General Expenditures	4,672	3,039	13,593	7,023	4,185	2,096	10,758	5,871	33,209	18,029	
6. Total	316,119	205,614	919,923	475,219	283,219	141,825	727,984	397,255	2,247,245	1,219,913	
7. Interest During Construction	3,161	2,056	13,797	7,128	2,832	1,418	7,280	3,973	27,070	14,575	
8. Total	319,280	207,670	933,720	482,347	286,051	143,243	735,264	401,228	2,274,315	1,234,488	54.28
9. Book Cost (Excluding Land & Rights-of-Way)	221,911		730,009		196,519		547,139		1,695,578		
10. Total	541,191		1,663,729		482,570		1,282,403		3,969,893		

11. One-half of Line 10.....	270,596		831,865		241,285		641,201		1,984,947	1,077,429	54.28
12. Land Owned and Used.....	101	101	513	117	450	144	186	186	1,250	548	
13. Land Used—Not Owned.....			821	821					821	821	
14. Rights-of-Way.....	6,130	24,351	11,460	5,965	625	282	6,304	4,011	24,519	14,609	
15. Working Capital.....									38,071	35,071	
16. Total Lines 11 to 15 inclusive.....									2,046,608	1,128,478	
17. Going Concern and Other Elements of Value 5.32%.....									108,880	60,035	
18. Final Valuation Used as Earnings Basis.....									2,155,488	1,188,513	55.14

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1943:

1. Valuation as of December 31, 1942—Used as earnings basis.....	\$1,408,000.00
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P").....	285,296.43
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes).....	1,449.00
4. Net earnings from Transportation and other Common carrier services.....	283,845.63
5. 7% of Valuation of Common Carrier Property.....	98,560.00
6. Excess earnings transferred to Special Surplus Account.....	185,285.63

Dividends paid during year

Dividends paid to stockholders:

1. From earnings on Transportation and Other Common Carrier Services (Earned Subsequent to January 1, 1942):
 - (a) From current year's allowable earnings..... 75,000.00
 - (b) From prior year's allowable earnings.....
2. From earnings made prior to January 1, 1942:
 - (a) From Balance in Surplus January 1, 1942.....
 - (b) From Depreciation Reserve Adjustment.....

Total Dividends paid to stockholders..... 75,000.00

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. BROOME, *Secretary*.

cc: Interstate Commerce Commission, Attn: Mr. W. P. Bartel, Secretary, Washington 25, D.C.

360

TIDAL PIPE LINE COMPANY

*Estimated valuation of properties as of December 31, 1942
at 1947 period prices*

	Original cost	Cost of reproduction new	Cost of reproduction less depreciation	Condition, percent
SUMMARY—OWNED AND USED				
(Excluding Land and Rights-of-Way)				
Val. Sec. 1-G Conroe Gathering.....	\$195,659	\$374,360	\$215,747	57.63
Val. Sec. 2-G East Texas Gathering.....	546,686	946,961	563,265	59.48
Val. Sec. 1-T Conroe, Texas Trunk Line.....	218,353	394,012	279,998	71.06
Val. Sec. 1-S-T East Texas Main Line.....	699,407	1,104,938	751,037	67.97
	1,660,105	2,820,271	1,810,047	64.18
SUMMARY—USED—NOT OWNED				
(Excluding Land and Rights-of-Way)				
Val. Sec. 4-T East Texas Main Line.....	6,840	19,954	13,568	68.00
Total Used.....	1,666,945	2,840,225	1,823,615	64.21

Estimated final valuation as of December 31, 1942 at 1942 period prices

	Gross	Percent	Net
1. Original Cost (Less Land and R.O.W.).....	\$1,666,945	44.90	\$745,458
2. Reproduction Cost—New (72% of 1947 Period).....	2,044,962	55.10	1,126,774
3. Total.....	3,711,907	100.00	1,875,232
4. Condition Percent (64.21).....			1,204,086
5. 6% Going Concern.....			72,177
6. Land.....			1,579
7. Rights-of-Way.....			18,792
8. Working Capital.....			111,366
9. Final Value.....			1,408,000

361 TIDAL'S REVISED 1944 REPORT TO ATTORNEY GENERAL

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Columbia, Civil Action No. 14060, the following revised statement

is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1944:

1. Valuation as of December 31, 1943—Used as earnings basis	\$1,402,000.00
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P")	342,927.90
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)	3,644.46
4. Net earnings from Transportation and other common carrier services	339,283.44
5. 7% of Valuation of Common Carrier Property	98,140.00
6. Excess earnings transferred to Special Surplus Account	241,143.44

Dividends paid during year

Dividends paid to stockholders:

1. From earnings on Transportation and Other Common Carrier Services (Earned subsequent to January 1, 1942):	
(a) From current year's allowable earnings	75,000.00
(b) From prior year's allowable earnings	
2. From earnings made prior to January 1, 1942:	
(a) From Balance in Surplus January 1, 1942	
(b) From Depreciation Reserve Adjustment	

Total Dividends paid to Stockholders..... 75,000.00

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. BROOME, *Secretary*.

cc: Interstate Commerce Commission, Attn: Mr. W. P. Bartel, Secretary, Washington 25, D.C.

362

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1943
at 1947 period prices

	Original cost	Cost of reproduction new	Cost of reproduction less depreciation	Condition, percent
SUMMARY—OWNED AND USED				
(Excluding Land and Rights-of-Way)				
Val. Sec. 1-G Conroe Gathering.....	\$196,519	\$365,568	\$308,035	84.30
Val. Sec. 2-G East Texas Gathering.....	547,638	953,451	553,161	58.02
Val. Sec. 1-T Conroe, Texas Trunk Line.....	221,912	394,013	271,567	68.92
Val. Sec. 1-3-T East Texas Main Line.....	706,715	1,135,835	750,170	66.05
	1,672,784	2,848,867	1,782,933	62.58
SUMMARY—USED—NOT OWNED				
(Excluding Land and Rights-of-Way)				
Val. Sec. 4-T East Texas Main Line.....	6,840	19,954	12,970	65.00
Total Used.....	1,679,624	2,868,841	1,795,903	62.60

Estimated final valuation as of December 31, 1943 at 1943 period prices

	Gross	Percent	Net
1. Original Cost.....	\$1,679,624	48.51	\$730,804
2. Reproduction Cost—New (79% of 1947 Period).....	2,190,319	58.49	1,231,662
3. Total.....	3,869,943	100.00	1,962,466
4. Condition Percent (62.60).....			1,228,604
5. 6% Going Concern and Other Elements of Value.....			73,710
6. Land.....			1,579
7. Rights-of-Way.....			18,288
8. Working Capital.....			79,919
9. Final Value.....			1,402,000

363

TIDAL'S REVISED 1945 REPORT TO ATTORNEY
GENERAL

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Colum-

bia, Civil Action No. M060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1945:

1. Valuation as of December 31, 1944—Used as earnings basis-----	\$1,439,000.00
2. Total Net earnings (Line 39, Schedule 302, Annual Report Form "P")-----	329,151.00
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)-----	4,747.39
4. Net earnings from Transportation and other common carrier services-----	324,403.61
5. 7% of Valuation of Common Carrier Property-----	100,730.00
6. Excess earnings transferred to Special Surplus Account-----	223,673.61

Dividends paid during year

Dividends paid to stockholders:

1. From earnings on Transportation and other common carrier services (Earned subsequent to January 1, 1942):	
(a) From current year's allowable earnings-----	75,000.00
(b) From prior year's allowable earnings-----	
2. From earnings made prior to January 1, 1942:	
(a) From Balance in Surplus January 1, 1942-----	
(b) From Depreciation Reserve Adjustment-----	
Total Dividends paid to stockholders-----	75,000.00

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. BROOME, *Secretary*.

cc: Interstate Commerce Commission, Attn: Mr. W. P. Bartel, Secretary, Washington 25, D.C.

364

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1944 at 1947 period prices

	Original cost	Cost of reproduction new	Cost of reproduction less depreciation	Condition, percent
SUMMARY—OWNED AND USED				
(Excluding Land and Rights-of-Way)				
Val. Sec. 1-G Conroe Gathering.....	\$201,609	\$372,750	\$201,413	54.03
Val. Sec. 2-G East Texas Gathering.....	572,619	970,081	563,909	58.13
Val. Sec. 1-T Conroe, Texas Trunk Line.....	222,674	394,947	282,246	66.40
Val. Sec. 1-3-T East Texas Main Line.....	737,904	1,162,235	762,501	65.61
	1,734,806	2,900,013	1,790,069	61.73
SUMMARY—USED—NOT OWNED				
(Excluding Land and Rights-of-Way)				
Val. Sec. 4-T East Texas Main Line.....	6,840	19,954	12,571	63.00
Total Used.....	1,741,646	2,919,967	1,802,640	61.73

Estimated final valuation as of December 31, 1944 at 1944 period prices

	Gross	Percent	Net
1. Original Cost.....	\$1,741,646	43.02	\$749,296
2. Reproduction Cost—New (70% of 1947 Period).....	2,306,774	56.98	1,314,400
3. Total.....	4,048,420	100.00	2,063,696
4. Condition Percent (61.73).....			1,273,885
5. 6% Going-Concern and Other Elements of Value.....			76,434
6. Land.....			1,579
7. Rights-of-Way.....			18,348
8. Working Capital.....			65,744
9. Final Value.....			1,439,000

365 TIDAL'S REVISED 1946 REPORT TO ATTORNEY GENERAL

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Colum-

bia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1946:

1. Valuation as of December 31, 1945—Used as earnings basis.....	\$1,528,000.00
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P").....	366,455.81
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes).....	5,614.24
4. Net earnings from Transportation and other common carrier services.....	360,841.57
5. 7% of Valuation of Common Carrier Property.....	106,820.00
6. Excess earnings transferred to Special Surplus Account.....	254,021.57

Dividends paid during year

Dividends paid to stockholders:

1. From earnings on Transportation and Other Common Carrier Services (Earned subsequent to January 1, 1942):	
(a) From current year's allowable earnings.....	75,922.95
(b) From prior year's allowable earnings.....	49,231.30
2. From earnings made prior to January 1, 1942:	
(a) From Balance in Surplus January 1, 1942.....	17,345.75
(b) From Depreciation Reserve Adjustment.....	
Total Dividends paid to stockholders.....	142,500.00

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. BROOME, *Secretary*.

cc: Interstate Commerce Commission, Attn: Mr. W. P. Bartel, Secretary, Washington 25, D.C.

366

TIDAL PIPE LINE COMPANY

*Estimated valuation of properties as of December 31, 1945
at 1947 period prices*

	Original cost	Cost of reproduction new	Cost of reproduction less depreciation	Condition, percent
SUMMARY—OWNED AND USED				
(Excluding Land and Rights-of-Way)				
Val. Sec. 1-G Conroe Gathering.....	\$204,318	\$383,965	\$201,772	62.55
Val. Sec. 2-G East Texas Gathering.....	593,385	909,945	539,895	57.72
Val. Sec. 1-T Texas Trunk Line.....	225,646	908,617	247,278	64.54
Val. Sec. 1-3-T East Texas Main Line.....	738,518	1,168,833	743,512	63.61
	1,761,867	2,921,410	1,782,457	60.33
SUMMARY—USED—NOT OWNED				
(Excluding Land and Rights-of-Way)				
Val. Sec. 4-T East Texas Main Line.....	6,840	19,954	12,168	60.96
Total Used.....	1,768,707	2,941,364	1,774,625	60.33

Estimated final valuation as of December 31, 1945 at 1945 period prices

	Gross	Percent	Net
1. Original Cost.....	\$1,768,707	41.72	\$737,905
2. Reproduction Cost—New (84% of 1947 Period).....	2,470,746	58.28	1,439,951
3. Total.....	4,239,453	100.00	2,177,856
4. Condition Percent (60.33).....			1,313,000
5. 6% Going Concern and Other Elements of Value.....			78,834
6. Land.....			1,879
7. Rights-of-Way.....			18,492
8. Working Capital.....			113,194
9. Final Value.....			1,526,000

367 TIDAL'S REVISED 1947 REPORT TO ATTORNEY GENERAL

TIDAL PIPE LINE COMPANY,
Tulsa 2, Oklahoma, September 25, 1950.

ATTORNEY GENERAL OF THE UNITED STATES,
Washington 25, D.C.

SIR: Pursuant to the terms of Final Judgment in United States of America vs. The Atlantic Refining Company, et al., District Court of the United States for the District of Colum-

274 UNITED STATES VS. ATLANTIC REFINING CO. ET AL.

bia, Civil Action No. 14060, the following revised statement is made in behalf of Tidal Pipe Line Company, one of the defendant common carriers referred to therein, for the year 1947:

1. Valuation as of December 31, 1946—Used as earnings basis-----	\$1,561,000.00
2. Total net earnings (Line 39, Schedule 302, Annual Report Form "P")-----	380,010.33
3. Less earnings from interest on Special Surplus funds invested in U.S. Bonds—Net (After Federal Income Taxes)-----	8,162.96
4. Net earnings from Transportation and other common carrier services-----	371,847.37
5. 7% of Valuation of Common Carrier Property-----	109,270.00
6. Excess earnings transferred to Special Surplus Account-----	262,577.37

Dividends paid during year

Dividends paid to stockholders:

1. From earnings on Transportation and Other Common Carrier Services (Earned subsequent to January 1, 1942):	
(a) From Current year's allowable earnings-----	75,000.00
(a) From prior year's allowable earnings-----	
2. From earnings made prior to January 1, 1942:	
(a) From Balance in Surplus January 1, 1942-----	
(b) From Depreciation Reserve Adjustment-----	
Total Dividends paid to stockholders-----	75,000.00

Very truly yours,

TIDAL PIPE LINE COMPANY,
By Y. P. BROOME, Secretary.

cc. Interstate Commerce Commission, Attn: Mr. W. P. Bartel, Secretary, Washington 25, D.C.

368

TIDAL PIPE LINE COMPANY

Estimated valuation of properties as of December 31, 1946 at 1947 period prices

	Original cost	Cost of reproduction new	Cost of reproduction less depreciation	Condition, percent
SUMMARY—OWNED AND USED				
<i>(Excluding Land and Rights-of-Way)</i>				
Val. Sec. 1-G Conroe Gathering.....	\$214,242	\$393,650	\$109,909	50.78
Val. Sec. 2-G East Texas Gathering.....	603,555	978,852	544,223	55.60
Val. Sec. 1-T Conroe, Texas Trunk Line.....	225,853	398,474	245,486	61.61
Val. Sec. 1-3-T East Texas Main Line.....	736,964	1,192,071	746,559	62.63
	1,800,614	2,963,047	1,736,177	58.99
SUMMARY—USED, NOT OWNED				
<i>(Excluding Land and Rights-of-Way)</i>				
Val. Sec. 4-T East Texas Main Line.....	6,840	19,964	11,078	60.03
Total Used.....	1,807,454	2,983,001	1,748,155	58.60

Estimated final valuation as of December 31, 1946 at 1946 period prices

	Gross	Percent	Net
1. Original Cost.....	\$1,807,454	40.51	\$732,212
2. Reproduction Cost—New (80% of 1947 Period).....	2,654,571	59.49	1,579,383
3. Total.....	4,462,355	100.00	2,311,595
4. Condition Percent (58.60).....			1,354,595
5. 6%—Going Concern Value.....			81,275
6. Land.....			1,579
7. Rights-of-Way.....			18,103
8. Working Capital.....			105,447
9. Final Value.....			1,561,000

369 Certification of service (omitted in printing).

370 In United States District Court for the District of Columbia

Transcript of hearing—March 25, 1958 (excerpt) ruling of the Court

The COURT. Now that leaves for determination the matter which was heard last evening relating to Tidal and to Tidewater, as to which I have the following to say:

First, as to Tidal, I do not find that it has violated the consent decree by including in its valuation, for the purpose of

computing the 7 percent dividend permitted under the decree, property used for common carrier purposes but not owned by it.

The decree must be read as a whole. Paragraph III(a) defines "valuation" as "the latest final valuation of each common carrier's property owned and used for common carrier purposes as made by the Interstate Commerce Commission," to which certain specific adjustments shall be made. The decree elsewhere refers to "the final valuation" of the common carrier's property, as determined by the Interstate Commerce Commission and brought up to date through the accounting methods set forth in the Uniform System of Accounts for Pipe Lines prescribed by the I.C.C. I do not find any indication of an intent of the parties to the consent decree to utilize but one I.C.C. classification as the basic valuation.

371 However, if there be any ambiguity, the practice through the years has shown an acquiescence on the part of the Government in the interpretation placed on the decree by Tidol. This being so, we do not reach the question of treble damages.

From what has gone before it follows that the Government is entitled to no relief against Tidewater. And, likewise, that the motion is denied as to Tidol.

I will take an order to that effect.

372 In the United States District Court for the
District of Columbia

[File endorsement omitted.]

Civil Action No. 14060

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ATLANTIC REFINING COMPANY, ET AL., DEFENDANTS

Order

March 26, 1958

Plaintiff having moved, on October 11, 1957, for an order directing Tidal Pipe Line Company to carry out the judgment herein entered December 23, 1941, and for such relief against Tidewater Oil Company as the Court deems appropriate and proper under the circumstances; Now,

Upon the final judgment entered on consent December 23, 1941, the motion of plaintiff entitled "Motion for Order for Carrying Out the Final Judgment Entered in the Above Cause on December 23, 1941" against Tidal Pipe Line Company and Tidewater Oil Company filed October 11, 1957, the verified response of Tidal Pipe Line Company and Tidewater Oil Company filed January 20, 1958, and the appendix to the brief of Tidal Pipe Line Company and Tidewater Oil Company filed March 24, 1958; And

After hearing counsel for the plaintiff and for the defendants Tidal Pipe Line Company and Tidewater Oil Company upon the foregoing record, and there being no disputed questions of fact, and the Court upon due consideration having rendered its opinion on March 25, 1958, it is this 26th day of March, 1958,

Ordered that plaintiff's motion for an order directing Tidal Pipe Line Company to carry out the judgment herein entered December 23, 1941, and for such relief against Tidewater Oil Company as the Court deems appropriate and proper under the circumstances, be and the same hereby is, in all respects, denied; and it is further

Ordered that the valuation of Tidal Pipe Line Company's property on which the shipper-owner's permissible dividends may be computed is the valuation as provided in the judgment entered December 23, 1941 of all property used by it for common carrier purposes, whether owned by it or not.

R. B. KEECH,
Judge.